

EVIDENTIARY HEARING, COMMITTEE CONFERENCE on PMPD
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Application for Certification of) Docket No.
the Tesla Power Plant Project) 01-AFC-21
by Florida Power and Light)
_____)

TRACY COMMUNITY CENTER
300 E. TENTH STREET
TRACY, CALIFORNIA

THURSDAY, APRIL 8, 2004

11:00 a.m.

Reported by:
James Ramos
Contract No. 170-01-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

John Geesman, Presiding Member

HEARING OFFICER, ADVISORS PRESENT

Susan Gefter, Hearing Officer

STAFF AND CONSULTANTS PRESENT

Jack Caswell, Project Manager

Paul Kramer, Staff Counsel

Amanda Stennick

Rick York

Tony Mediatì

Alvin Greenberg

John S. Kessler
Kessler and Associates, LLC

Brewster Birdsall
Aspen Environmental Group

PUBLIC ADVISER

J. Mike Monasmith

APPLICANT

Scott A. Galati, Attorney
Grattan and Galati

Scott A. Busa, Project Director
Duane McCloud, Technical Manager
Florida Power and Light Energy

David Stein
URS

APPLICANT

Dwight R. Mudry, Consulting Scientist
TetraTech
Foster Wheeler Environmental Corporation

Linda Moussavian

INTERVENORS

Robert Sarvey

Jim Swaney, Permit Services Manager
San Joaquin Valley Air Pollution Control District

Michael Boyd, President
Californians for Renewable Energy

ALSO PRESENT

Steven G. Bayley, Deputy Director of Public Works
City of Tracy

Irene Sundberg

Ena Aguirre

Susan Sarvey
Clean Air for Citizens and Legal Equality

Paula Buenavista

Bill Powers

Connie Hoag

Paul Sundberg

Claudette Garcia

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P R O C E E D I N G S

6:02 p.m.

PRESIDING MEMBER GEESMAN: I'm John

Geesman, the Presiding Member of the Committee of the California Energy Commission holding today's hearing. Commissioner Rosenfeld, who is the Associate Member of this Committee, was unable to join us.

This is a hearing on the Presiding Member's Proposed Decision which we released the end of February. It is primarily designed, at least during the first portion of our hearing, to respond to various what I'll call holes in the evidentiary record of our earlier hearings that prevented us, in the proposed decision issued in February, from recommending certification of the project.

We're going to use most of our time this morning and this afternoon going through each of the issue areas that we identified in the proposed decision requiring additional information or clarification. We're also going to address some editorial comments and other housekeeping matters.

We'll have a public comment period for members of the public that are here now later in

1 the afternoon. And then we've also got a special
2 session scheduled for 6:00 this evening to take
3 public comment, as well.

4 Next to me and actually conducting this
5 hearing is Susan Gefter, who is the Commission's
6 Hearing Officer assigned to this particular
7 proceeding. We probably ought to start, I guess,
8 with introductions.

9 Mike, do you want to go first?

10 MR. BOYD: Sure. I'm Mike Boyd; I'm the
11 President of Californians for Renewable Energy,
12 CARE.

13 HEARING OFFICER GEFTER: And you're an
14 intervenor in this --

15 MR. BOYD: Okay, so let me say it. I'm
16 Mike Boyd; I'm the President of Californians for
17 Renewable Energy, CARE.

18 HEARING OFFICER GEFTER: I'm sorry, id
19 you'd identify, you're a party.

20 MR. BOYD: I'm an intervenor in the
21 proceeding.

22 MR. SARVEY: I'm an intervenor Sarvey
23 representing my family and the community.

24 MR. GALATI: My name is Scott Galati,
25 representing the applicant, Midway Power.

1 MR. BUSA: My name is Scott Busa; I'm
2 the Project Manager for Midway Power.

3 MR. McCLOUD: My name is Duane McCloud;
4 I'm the Project Engineer for the Tesla Power
5 project.

6 MR. KRAMER: I'm Paul Kramer, the Staff
7 Counsel replacing Darcie Houck, who has been
8 transferred to an assignment in another part of
9 our agency, representing staff.

10 MR. CASWELL: I'm Jack Caswell, Project
11 Manager for this particular project for the Energy
12 Commission. And we have the staff members in the
13 audience representing certain technical areas that
14 may be of interest to the public here, as well as
15 available for response to questions from the
16 Committee and the intervenors and the applicant.

17 HEARING OFFICER GEFTER: So, are there
18 any agencies being represented here today? City
19 of Tracy?

20 UNIDENTIFIED SPEAKER: The City's here.

21 HEARING OFFICER GEFTER: If you just
22 want to introduce yourself.

23 MR. BAYLEY: Steve Bayley, City of
24 Tracy.

25 HEARING OFFICER GEFTER: Thank you. And

1 also there's another intervenor for San Joaquin
2 Unified Air Pollution Control District. Is
3 someone here?

4 MR. SWANEY: Jim Swaney with the
5 District.

6 HEARING OFFICER GEFTER: Could you
7 please spell your name, Mr. Swaney?

8 MR. SWANEY: Sorry. It's S-w-a-n-e-y.

9 HEARING OFFICER GEFTER: Thank you. Any
10 other local agencies or governmental entities?

11 The Energy Commission also has a Public
12 Adviser. Mr. Monasmith from the Energy Commission
13 is here representing the Public Adviser today.
14 He's the Associate Public Adviser. And members of
15 the public are invited to participate today; and
16 if you wish to address us please fill out a blue
17 card. Mr. Monasmith has those for you. He's
18 standing in the back, raising his hand. Thank
19 you.

20 All right, are there any elected
21 officials here today? The City of Tracy or any
22 other local governmental agencies?

23 All right. The purpose of today's
24 hearing is to take evidence on the topics
25 identified in the Presiding Member's Proposed

1 Decision. And notice of this event was mailed out
2 when the Presiding Member's Proposed Decision was
3 issued in late February. Copies of the notice are
4 on the table in the back. Mr. Monasmith can
5 provide you copies of that notice.

6 In the notice we listed the various
7 topics that we require additional evidence on.
8 And we're going to -- our agenda for today will be
9 to take evidence on just those topics.

10 In terms of the order we're going to
11 hear the evidence, the first topic we're going to
12 hear is socioeconomic; then biological resources;
13 fire protection; water resources; air quality and
14 public health.

15 And we're going to take the testimony on
16 the socioeconomic, biology and fire at the
17 beginning of the hearing so witnesses may leave,
18 if they wish, after those topics are completed,
19 since those were rather short areas of concern.

20 And then the witnesses on water, air and
21 public health, we'll ask you to stay throughout
22 the day and also into the evening because members
23 of the public may have questions. They may not be
24 here during the daytime.

25 We understand Mr. Bayley from the City

1 of Tracy may have to leave early, and so we will
2 take water before we hear air quality and public
3 health.

4 In order to get going on this we have a
5 few motions from the parties, and so at this time
6 we'll entertain those motions. And the first
7 motion that I want to address was filed by Mr.
8 Boyd in which he requested the record be reopened
9 to consider the project's cumulative impacts on
10 avian mortality due to a new development of wind
11 turbines in the Altamont Pass area.

12 Staff filed an opposition to the
13 intervenor's request. And I'd like to discuss
14 that matter now so that we can rule on it at this
15 point. So, Mr. Boyd.

16 MR. BOYD: Basically CARE filed a
17 request for a supplemental evidentiary hearing.
18 It's already -- biological resources already on
19 the agenda, as I understand it.

20 Basically there is a lot of information
21 that's come out of recent -- since the last
22 evidentiary hearing that was held in this matter.
23 There's been a lot of stuff going on with the --
24 there's a number of conditional use permits that
25 have been applied for by, including the applicant

1 for this project, in Altamont Pass to basically
2 repowering, I guess, or repowering some existing
3 turbine, wind turbines in the Altamont Pass.

4 And the original conditional use permits
5 they didn't really anticipate the avian mortality
6 that occurred as a result of 20 years ago
7 permitting those turbines.

8 It just seemed to me that, you know, Dr.
9 Smallwood did raise this issue clearly in his
10 testimony. But at that point we didn't have the
11 degree and depth of information that we now have.

12 And I also thought that it might be
13 appropriate to raise it here because it's my
14 understanding that the research project that
15 they're working on is actually a CEC project
16 funded by you guys. And I just thought it would
17 be appropriate to include that information in the
18 deliberations.

19 I didn't really think there was a need
20 to have a large amount of cross on it or anything.
21 It's just a matter of putting this information in
22 the record, making it part of the record, since
23 it's something that happened since the last
24 meeting that we didn't have any way of
25 anticipating before.

1 And clearly there is a cumulative
2 impact, talking about thousands of birds that are
3 being killed every year by the turbines in the
4 Altamont Pass. Clearly, that degree of impact
5 wasn't analyzed, to my knowledge, in the prior
6 analysis that was done by the Commission Staff.

7 And basically that's why I put it in
8 there. And I understand staff's position. But I
9 do think it's pertinent and relevant to the case,
10 since it's in the immediate vicinity of the
11 project.

12 HEARING OFFICER GEFTER: Thank you.
13 Staff, you filed an opposition to this request?

14 MR. KRAMER: Right. In order for you to
15 have a need to conduct a cumulative impacts
16 analysis the project you're looking at has to be
17 making some kind of contribution to this other
18 problem. And the testimony in the record shows
19 that this plant -- there's no evidence that this
20 plant is going to be knocking down any
21 significant, or perhaps any, birds.

22 So it's not the purpose of this
23 proceeding to deal with the environmental impacts
24 of all the applicants, other projects that are
25 before other bodies. And it's irrelevant that the

1 CEC is funding some of this research. There's
2 simply no connection, and there's no reason to
3 muddle this record with that information which is
4 irrelevant.

5 PRESIDING MEMBER GEESMAN: I think it's
6 an important subject, but I find no connection to
7 this case. So the motion is denied.

8 HEARING OFFICER GEFTER: Mr. Boyd also
9 filed a request for appearance of Tuan Ngo, who is
10 a staff witness on air quality in a previous case,
11 the East Altamont case. And I understand from
12 your request that you would want Mr. Ngo to
13 testify if exhibits 111 and 112 are challenged.

14 MR. BOYD: Correct.

15 HEARING OFFICER GEFTER: And these are
16 exhibits proposed by Mr. Sarvey. So what we'll do
17 is with respect to the exhibit list we could
18 address that now, and then discuss the concerns of
19 both applicant and staff with respect to exhibits
20 111 and 112.

21 And I've provided copies of our proposed
22 revised exhibit list to the parties. I also have
23 printed copies here. And ask the parties to
24 indicate to me whether they objected to any of the
25 new proposed exhibits.

1 I heard from both the applicant and
2 staff, and both parties are objecting to exhibits
3 111 and 112. So, let's hear from applicant on
4 those two objections. And then we'll hear from
5 staff. And then we'll rule on those objections.

6 MR. GALATI: First we'll start with
7 exhibit 111, which is an email from Tuan Ngo to
8 Gary Rubenstein. Again, this is in the East
9 Altamont Energy Center case. If it was
10 appropriately docketed and if it is in the
11 evidentiary record the Committee has already taken
12 administrative notice of the entire East Altamont
13 record, elevating it to a level of an exhibit upon
14 which the Energy Commission here could rely upon,
15 gives it a level of relevance that I see lacking.

16 In addition, it is hearsay, so only to
17 the extent that it can be used to corroborate
18 something already in the record, at a minimum
19 that's the limited use it should be.

20 Again, I'd point out that the
21 administrative record, notice has been taken. Mr.
22 Sarvey, in his brief, has had ample opportunity to
23 cite to that document if it is in the
24 administrative record. And it should not be an
25 exhibit in this case.

1 Exhibit 112 is a staff brief. Evidence
2 is facts, a brief is a legal opinion and argument.
3 And, in fact, we had quite a big discussion here
4 at this case whether or not Commissioner Geesman
5 would allow us to litigate arguments and opinions
6 on the application of law as forms of evidence.

7 We were not allowed to do that. We were
8 unable to do that in a brief. Mr. Sarvey was
9 clearly able to cite that brief in his briefs as
10 support for any argument he may have. But it
11 should not be given the level of evidence in this
12 proceeding.

13 HEARING OFFICER GEFTER: Staff.

14 MR. KRAMER: We tend to agree with what
15 the applicant said. And as I interpreted Mr.
16 Boyd's request, Mr. Ngo's presence would be
17 necessary if there was any question about the,
18 foundational questions about the document.

19 But we don't think it's appropriate for
20 him to testify in this case or provide any
21 opinion. He's not the staff that worked on it.

22 We are not saying that the email is not
23 Mr. Ngo's work. But I think it's appropriate for
24 our witness to talk about whether and to what
25 extent it applies to this case. And Mr. Birdsall

1 will be doing that. So we see no reason to have
2 him present.

3 We also object to the exhibit. We think
4 it should be more appropriately treated as, in
5 effect, a reference. You look at an FSA in any
6 case, they have lots of references listed after
7 each section.

8 And I understand that Mr. Sarvey started
9 out that way. It sounds like he's willing to
10 approach it in that way. But he was directed
11 otherwise.

12 So we would just encourage these all to
13 be described as references. 112, just like 111 --
14 111 is, I don't know for a fact whether it's
15 actually in the docket even for the East Altamont
16 case. If I was going to bet I would say it
17 probably isn't. It's just an email communication.
18 It wasn't any final product.

19 112 is already in because of the
20 Committee's decision to take administrative notice
21 of the full hearing record of the East Altamont
22 case. And there was a brief filed in that case
23 where staff was arguing for a particular approach
24 to the air quality analysis.

25 I'd point out that also in that case,

1 later on the Committee in that case ruled against
2 staff. And so it's rather one-sided and
3 misleading just to cite the staff brief, because
4 the Committee took a different position. I have
5 copies of that ruling if anybody wants to look at
6 it. But it's, of course, already a part of the
7 record. I think that's all I need to say about
8 that.

9 MR. SARVEY: Can I have an opportunity
10 to comment on that?

11 HEARING OFFICER GEFTER: Yeah. I just
12 have a question with respect to exhibit 111. I
13 think this also refers to the modeling files to
14 the cumulative analysis which were on a CD?

15 MR. SARVEY: Correct.

16 HEARING OFFICER GEFTER: Okay, and that
17 is in the East Altamont docket?

18 MR. SARVEY: No.

19 HEARING OFFICER GEFTER: It's not?

20 MR. SARVEY: It is not. That's why I
21 docketed it in this docket --

22 HEARING OFFICER GEFTER: Okay, so
23 neither the email nor the actual modeling files
24 are in the East Altamont --

25 MR. SARVEY: And that's why --

1 HEARING OFFICER GEFTER: -- docket.

2 MR. SARVEY: And that's why I docketed
3 that particular portion. Now, the other portion
4 of it, the East Altamont Energy staff status
5 report on workshop and errata are already
6 exhibit -- in this proceeding, exhibit 99, section
7 5. So they are already -- the cat's out of the
8 bag on that one. They're already in on that one.

9 HEARING OFFICER GEFTER: Okay, which one
10 is exhibit 99?

11 MR. SARVEY: 99 is the cumulative
12 modeling studies I presented.

13 HEARING OFFICER GEFTER: Okay.

14 MR. SARVEY: No, that's not the current
15 99.

16 HEARING OFFICER GEFTER: No.

17 MR. SARVEY: That's been switched. I'm
18 sorry.

19 HEARING OFFICER GEFTER: So is it 100?

20 MR. SARVEY: Yeah, it would be 100, that
21 is correct. It has been switched.

22 HEARING OFFICER GEFTER: Okay.

23 MR. SARVEY: So that's already a part of
24 the record.

25 HEARING OFFICER GEFTER: Okay, so what

1 you're offering in 111 has already been
2 incorporated into 100?

3 MR. SARVEY: What I'm offering in 111
4 is, part of 111 is already part of 100. But what
5 I'm offering is the email from Tuan Ngo on
6 modeling files. And the purpose of that is to
7 demonstrate that the fact that the applicant and
8 staff have both left several projects out of their
9 cumulative modeling analysis. I wanted to show
10 the true impact of what these mobile sources and
11 other additional projects that they've left out of
12 the hearing -- I mean out of their modeling
13 analysis. I want that to be present in the
14 record. That's the purpose that I've docketed
15 those.

16 112 I would agree with Mr. Kramer,
17 that's a brief. The only purpose of it was to
18 show the staff's position in terms of mobile
19 sources. In the East Altamont Energy case I would
20 agree with him that that should not be an exhibit,
21 but what you have to understand here is I'm being
22 put into a standard that's a little higher than
23 the other parties; when I cite things they're not
24 accepted.

25 And, for instance, I'll quote that Mr.

1 Galati here would not accept my draft EIR results
2 that I cited in my testimony. He wants the final
3 EIR, which I have brought. But, I mean, staff in
4 the FSA can cite something and it's accepted. Mr.
5 Stein can cite a document and his is accepted, not
6 challenged. I don't understand why mine is, which
7 is why I docketed these other items. Because I'm
8 constantly being challenged on everything I said.

9 I don't make these EIRs up; and I do
10 take offense to being constantly challenged on
11 everything I try to put in the record.

12 HEARING OFFICER GEFTER: Okay. I'm
13 going to go off the record right now.

14 (Off the record.)

15 HEARING OFFICER GEFTER: Let me ask Mr.
16 Sarvey to clarify, are you withdrawing exhibit 112
17 from the record now?

18 MR. SARVEY: I'm agreeing with Mr.
19 Kramer's approach. I think he has the correct
20 approach, and I'm just explaining why I put the
21 exhibit in there. And I agree with Mr. Kramer
22 that 112 should not be part of this record.

23 HEARING OFFICER GEFTER: Okay. And,
24 with respect to 111, could you explain the purpose
25 again of your offering this exhibit?

1 MR. SARVEY: I'm offering 111 because
2 number one, it was not docketed in the East
3 Altamont case, so therefore the Committee cannot
4 take administrative notice of it.

5 The other issue is I'm providing this
6 information to demonstrate that because staff and
7 applicant have refused to model mobile sources
8 from Mountainhouse, the Gateway project, the Tracy
9 Hills Technology Park, that the cumulative impact
10 that they've described to the Committee is grossly
11 understated. And that's the purpose of those
12 exhibits so the Committee will have the
13 opportunity to review what those mobile source
14 impacts mean. In a previous siting case we did
15 argue over them, and staff did produce this
16 exhibit. And I would like to have it part of the
17 record.

18 HEARING OFFICER GEFTER: Okay. The
19 Committee is going to accept exhibit 111 based on
20 the reasoning offered by Mr. Sarvey. And we will
21 give it whatever weight it is worth in the overall
22 picture of this project.

23 MR. SARVEY: Thank you.

24 HEARING OFFICER GEFTER: I understand
25 applicant also has objections to exhibits 115,

1 116, 117, 118 offered by Mr. Sarvey.

2 MR. GALATI: 115 and 116 are draft
3 documents. To elevate them to a level of an
4 exhibit they ought to be the final document that
5 represents that final agency's evaluation. If Mr.
6 Sarvey wants to produce those documents as final,
7 we'll accept them as exhibits.

8 In addition, exhibits 117 and 118 we
9 find are irrelevant and hearsay to this
10 proceeding.

11 HEARING OFFICER GEFTER: Mr. Sarvey.

12 MR. KRAMER: We also have some
13 objections.

14 HEARING OFFICER GEFTER: All right,
15 staff, why don't you offer your objections and
16 then Mr. Sarvey can respond.

17 MR. KRAMER: Well, we could concur with
18 Mr. Galati. And as to -- should we also talk
19 about 113 at this point?

20 HEARING OFFICER GEFTER: No, why don't
21 we talk about the ones that -- 115 through 118,
22 and then we'll go back to your other objection.

23 MR. KRAMER: Okay, then I guess I don't
24 have anything more to add to what Mr. Galati has
25 said.

1 HEARING OFFICER GEFTER: Mr. Sarvey, do
2 you want to respond to the objections to 115 and
3 116?

4 MR. SARVEY: Sure. First the objection
5 to 115 and 116 from the applicant demonstrates
6 what I was saying earlier, that for me to cite to
7 a document not only do I have to docket the draft
8 EIR, I'd have to docket the file, which I have
9 right here the file for both of those. So I just
10 wanted to put that out.

11 And make it well understood that there's
12 two levels here of performance. And I feel that,
13 you know, I'm not questioning the applicant
14 witness when they cite the document, and I'm not
15 questioning the staff's, but here I'm being
16 questioned. And I have to produce the final EIR,
17 when I've already produced the draft. So, that
18 takes care of my objections to 115 and 116, not
19 being --

20 HEARING OFFICER GEFTER: Okay, wait.
21 Mr. Sarvey, in other words you're going to
22 withdraw the drafts and you're going to offer the
23 final EIR --

24 MR. SARVEY: Well, the final --

25 HEARING OFFICER GEFTER: -- 115 and 116?

1 MR. SARVEY: -- the finals are
2 essentially useless because they don't contain air
3 quality information that the drafts do, so they
4 would have to be together. Additional.

5 And then as far as exhibit 117 and 118,
6 those are taken from the Department of
7 Environmental Protection for Massachusetts. And
8 their purpose is to corroborate the evidence which
9 I knew would be challenged in the exhibit number
10 113.

11 And in 113 these projects are cited as,
12 are plants combined cycle that are attaining 2
13 parts per million NOx, 2 parts per million CO, 2
14 parts per million ammonia slip.

15 And I knew that 113 would be challenged,
16 so I filed these final EIRs on those for the
17 memorandum of understanding in the EIR, that one
18 exhibit. So that's the purpose of those two
19 exhibits.

20 HEARING OFFICER GEFTER: All right.

21 MR. SARVEY: Once again, I feel I'm
22 being held to a higher standard.

23 HEARING OFFICER GEFTER: Okay. Mr.
24 Sarvey, so I understand that what you're going to
25 do is you're going to amend exhibit 115 to include

1 the final EIR, so you'll have the draft and the
2 final?

3 MR. SARVEY: Correct.

4 HEARING OFFICER GEFTER: And the same
5 with 116, the draft and the final?

6 MR. SARVEY: Correct.

7 HEARING OFFICER GEFTER: Okay. We're
8 going to accept those exhibits into the record.
9 We can take administrative notice as they're
10 governmental agency EIRs, in any event. And we
11 will give them whatever weight they deserve in the
12 context of this project.

13 MR. GALATI: Our purpose was to get
14 their whole action, not part of their action. So
15 we have no objection to the final and the draft
16 (inaudible) in that way.

17 HEARING OFFICER GEFTER: So that is --

18 MR. GALATI: But for purposes of the
19 record, though, the final does include the draft.
20 We're not trying to exclude the draft. We just
21 want to get the rest of the story which is told in
22 the final.

23 MR. KRAMER: Does it include it by
24 reference or --

25 MR. GALATI: A final EIR consists of the

1 draft environmental impact report, the comments
2 received, the response to those comments, and any
3 changes to the draft that may have resulted in
4 those comments. That is what is considered to be
5 the final EIR.

6 MR. KRAMER: Agreed. It's just that
7 different agencies sometimes package them
8 differently.

9 HEARING OFFICER GEFTER: All right,
10 thank you for that clarification.

11 With respect to exhibits 117 and 118,
12 Mr. Galati, is your objection that they are
13 hearsay because they are downloaded from the
14 webpage?

15 MR. GALATI: Yes, there's no one here to
16 authenticate what they are or what they mean. And
17 also our main objection was that they're
18 irrelevant to the proceeding here.

19 HEARING OFFICER GEFTER: Is that your
20 view, also, Mr. Kramer?

21 MR. KRAMER: We would agree with Mr.
22 Galati, yes.

23 HEARING OFFICER GEFTER: All right. You
24 know, we've had, in this proceeding we've had a
25 lot of references to webpages. And what we've

1 done is we have said we will, you know, admit some
2 of these references, understanding that they are
3 hearsay, that there's no one available to
4 authenticate these documents.

5 And we can receive them into the record
6 and give them whatever weight they are due in
7 light of the fact that we know they come from the
8 web, and that it is just information. And so
9 we're going to go ahead and receive these
10 documents into the record with the webpage
11 addresses.

12 With respect to 118, though, I do have
13 to indicate to all parties that there is no date
14 on this MOU, and therefore it's just a draft. And
15 it carries probably even less weight than some of
16 the other documents that we've received which have
17 webpage addresses.

18 Then I understand staff had an objection
19 to 113?

20 MR. KRAMER: Yes, on the face of it 113
21 says it is -- it's basically just a draft, not to
22 be cited and put out for public comment. So we
23 question the veracity, the solidity of the
24 conclusions that are expressed therein. And at a
25 minimum it should be given very little weight. It

1 appears just to be a trial balloon of sorts.

2 HEARING OFFICER GEFTER: So your
3 understanding is that this was not submitted to
4 the Legislature; that it was, at this point, just
5 a draft, a staff draft?

6 MR. KRAMER: That I don't know for sure.
7 Maybe the air quality staff does.

8 HEARING OFFICER GEFTER: On the document
9 it says, report to the Legislature from the
10 California Air Resources Board.

11 MR. KRAMER: Right.

12 HEARING OFFICER GEFTER: So, you think
13 it's a staff report and not the final report that
14 went to the Legislature?

15 MR. KRAMER: I'll confess that I didn't
16 research your question. I'm simply surmising from
17 the statement on the cover and the top of every
18 page that I looked at in the document, itself:
19 Draft, Do Not Cite or Quote for Public Comment.

20 HEARING OFFICER GEFTER: Mr. Sarvey, do
21 you know whether this document that you downloaded
22 from the web is a final document that went to the
23 Legislature, or just a draft?

24 MR. SARVEY: I am aware that it's a
25 draft. I'm also aware that I've submitted other

1 draft documents into this exhibit, most notably
2 the FSA and what-have-you. So, I feel that the
3 information contained in here is pertinent.
4 Particularly appendix A and B are the ones that
5 really are the only things that I want to cite.
6 It's information collected by the Air Resources
7 Board Staff. The rest of the body of the document
8 I don't care if it's admitted or not. But
9 (inaudible) particularly pertinent to this
10 particular proceeding, because they demonstrate
11 that there is, in fact, three combined cycle
12 projects that have been permitted and achieved in
13 practice 2 parts per million NOx and 2 parts per
14 million ammonia slip. And that's the purpose of
15 the exhibit.

16 HEARING OFFICER GEFTER: Okay. So
17 you've just indicated that you don't care whether
18 it's admitted or not, so are you withdrawing it
19 and you just --

20 MR. SARVEY: No, I'm not withdrawing it.
21 I'm asking that it be admitted, particularly
22 appendix A and B are the two that I'm most
23 concerned about. And appendix C contains
24 information that the Committee asked about in the
25 classification of the ARB related to the different

1 air districts in the State of California. So
2 appendix C is pretty much a response to a
3 Committee question.

4 HEARING OFFICER GEFTER: The Committee
5 is going to accept exhibit 113 and receive it into
6 the record, and give it what weight it's worth.
7 It is a staff report from another agency, and so
8 therefore, you know, it has very little weight.
9 But the information contained therein, now Mr.
10 Sarvey has the opportunity to argue that
11 information to the Committee.

12 All right. With respect to any other
13 exhibits to which there are objections, I'd like
14 to do that right now, and then we can move on.
15 And if there are no objections to any other
16 exhibits that are proposed that have not been
17 received to date, we can go forward without
18 discussion and admit them as a whole into the
19 record. And, you know, later on we'll actually
20 present the numbers into the record. Are there
21 any other objections?

22 MR. GALATI: None from the applicant.

23 HEARING OFFICER GEFTER: Okay.

24 MR. SARVEY: No objections.

25 MR. KRAMER: With the possible exception

1 of 114, which I'd like to consult with Mr.
2 Birdsall about during a break, we have no other
3 objections.

4 HEARING OFFICER GEFTER: Okay. For the
5 record, there were several exhibits that were
6 submitted since the hearing in September. And I'm
7 going to list them real quickly and that way we
8 can proceed with the rest of the hearing today.

9 And these would be received into the
10 record as of today. And those are exhibit 25A;
11 exhibit 108; we just received exhibit 111 and 112
12 was withdrawn; we received 113, 115, 116, 117,
13 118, 119. Exhibit 124 is received; 125 is
14 received; 126, 127, 128, 129 and 130. Exhibit
15 163, 164, 165, 166, 167, 168, 169, 170, 171, 172,
16 173, 174, 175, 176, 177.

17 So the only one pending is 114, and
18 we'll hear about that later from staff.

19 MR. KRAMER: We, just yesterday,
20 docketed our revised water quality conditions.
21 That needs a new number.

22 HEARING OFFICER GEFTER: Yes. And I'm
23 going to number that exhibit 128A. And those are
24 staff's revised water resources conditions of
25 certification. Is there any objection to

1 receiving that into the record at this time?

2 MR. GALATI: No objection.

3 MR. KRAMER: We'll be talking about
4 making some minor corrections to that during the
5 subsequent hearing.

6 HEARING OFFICER GEFTER: All right.
7 We'll receive it, and we'll also include the
8 corrections if there's no objection.

9 MR. SARVEY: No objection.

10 HEARING OFFICER GEFTER: Okay, so
11 exhibit 128A, staff's revised proposed conditions
12 of certification for soil and water resources is
13 received.

14 Seems that if there are no questions at
15 this point with respect to the format we can
16 proceed with the parties' testimony. I do have a
17 blue card from Mrs. Sarvey who would like to
18 address us. We will do that at -- looks like you
19 want to address us on air quality, particularly;
20 it says all topics, but why don't we -- we're
21 going to take testimony on the socioeconomics, and
22 if you're going to have any comment on
23 socioeconomics we'll do that after that testimony
24 is presented.

25 So, at this point, are there any

1 questions on the format? This will be a formal
2 evidentiary proceeding. The witnesses will
3 testify under oath. The parties will have an
4 opportunity to cross-examine.

5 I understand that, applicant, you're
6 going to submit your testimony by declaration on
7 this particular topic?

8 MR. GALATI: Yes, our witness is out of
9 the room right now. Could staff go first?

10 HEARING OFFICER GEFTER: No, applicant
11 goes first.

12 MR. GALATI: Here he is.

13 Our witness will be David Stein. He's
14 previously been sworn. Would you like to swear
15 him again for this hearing?

16 HEARING OFFICER GEFTER: Not necessary,
17 Mr. Stein. You've already been sworn and you will
18 testify under oath.

19 MR. STEIN: Yes.

20 Whereupon,

21 DAVID A. STEIN

22 was recalled as a witness herein, and having been
23 previously duly sworn, was examined and testified
24 further as follows:

25 //

DIRECT EXAMINATION

BY MR. GALATI:

Q Mr. Stein, are you familiar with exhibit 176 entitled, supplemental testimony of Manisha Kothari on socioeconomics? That is spelled M-a-n-i-s-h-a Kothari, K-o-t-h-a-r-i.

A Yes, I am.

Q And was that prepared, that testimony prepared under your supervision and direction?

A Yes, it was.

Q Mr. Stein, in that testimony there is a response to two questions posed by the Committee. Are you familiar with those?

A Yes.

Q Specifically question number 1 deals with how the develop -- the school impact money would be distributed. Are you familiar with that?

A Yes.

Q And in that testimony Ms. Kothari describes it 75 percent into the Mountainhouse District, and a 25 percent split to the Tracy Unified School District. Are you familiar with that?

A Yes.

Q She cites a resolution, but she does not

1 identify that resolution. Is it your
2 understanding that that is a resolution from 2003
3 by the Mountainhouse School District?

4 A Yes, that's my understanding.

5 Q In the testimony response to question
6 number 2 that deals with county tax assessment,
7 are you familiar with that?

8 A Yes.

9 Q And in that response Ms. Kothari
10 describes the power plant as a wasting asset. Are
11 you familiar with that?

12 A Yes.

13 Q Could you please describe why Ms.
14 Kothari and yourself believe that for purposes of
15 taxes that would be considered to be a wasting
16 asset?

17 A All of the built environment, the
18 equipment on the structures that are constructed
19 are depreciated assets. And as standard tax
20 treatment in accounting methodology, the land,
21 itself, that the plant is built on does, in fact,
22 appreciate. But the equipment would depreciate.

23 Q Mr. Stein, do you believe that that's
24 the same opinion as the Board of Equalization?

25 A Yes, that's my understanding.

1 MR. GALATI: We have no further
2 questions on direct examination for
3 socioeconomics. The testimony has already been
4 accepted into the record, so we make the witness
5 available for cross-examination.

6 HEARING OFFICER GEFTER: I have a
7 question regarding the resolution. You believe it
8 is a resolution from 2003 with the Mountainhouse
9 School District. Do you -- give me more
10 information about that.

11 MR. GALATI: We were unable to get a
12 copy of the resolution in the short period of
13 time. I do know it was in September of 2003.

14 HEARING OFFICER GEFTER: What does it
15 refer to?

16 MR. GALATI: The testimony describes
17 that the resolution shows how the developer impact
18 fee would be split. She describes it in her
19 testimony that resolution. What it does she just
20 didn't identify when they passed it.

21 HEARING OFFICER GEFTER: Would you be
22 able to obtain a copy and provide it for the
23 record?

24 MR. GALATI: We certainly will attempt
25 to do so. Trying to understand why it is

1 necessary to augment the record on that point.

2 The developer impact fee is going to be charged,
3 the applicant is going to pay it. There has been
4 no impact identified either in Tracy or
5 Mountainhouse. So I think the clarification
6 that's been provided ought to be enough for the
7 Committee to move forward on that issue.

8 I'm not sure I could get it in any
9 reasonable amount of time.

10 HEARING OFFICER GEFTER: Staff, would
11 you like to go forward with your testimony.

12 MR. KRAMER: Yes. First, on that other
13 point, I think a complete set of documentation
14 they're talking about would probably have to
15 include a similar resolution from the Tracy
16 Unified School District, since both parties have
17 to agree to a split. Otherwise there's a
18 procedure in the statute to go to arbitration.

19 We would propose to submit the testimony
20 of Amanda Stennick by declaration unless there are
21 questions. If there are, she has not been
22 previously sworn in this case.

23 HEARING OFFICER GEFTER: Are there
24 questions of the witness?

25 MR. GALATI: No questions from the

1 applicant.

2 HEARING OFFICER GEFTER: I would like to
3 ask Ms. Stennick a few questions, so let's swear
4 the witness, please.

5 Whereupon,

6 AMANDA STENNICK

7 was called as a witness herein, and after first
8 having been duly sworn, was examined and testified
9 as follows:

10 EXAMINATION

11 HEARING OFFICER GEFTER: I have a
12 question with respect to your testimony at page
13 18, which is exhibit 128 for the record. And in
14 that testimony you indicate that the value of the
15 project is increasing, and therefore it's likely
16 that it may be assessed differently over time.
17 And I'm not sure how that actually is consistent
18 with what the applicant says where they call it a
19 wasting asset.

20 MS. STENNICK: I don't think I stated
21 that the value of the project is increasing. The
22 project hasn't been assessed yet, and it won't be
23 assessed until the construction is complete.

24 HEARING OFFICER GEFTER: Well, look at
25 page 18, because it --

1 MS. STENNICK: Well, if the assessed
2 value of the property increases from the estimated
3 6 million, then the Board of Equalization would
4 assess the property and not be restricted to the 2
5 percent, which was imposed by Prop 13.

6 HEARING OFFICER GEFTER: All right. So
7 it's all speculative?

8 MS. STENNICK: At this point --

9 HEARING OFFICER GEFTER: I mean what
10 you're saying is speculative; what applicant said
11 is speculative, as well?

12 MS. STENNICK: Yeah, at this point, yes,
13 without --

14 HEARING OFFICER GEFTER: All right.

15 MS. STENNICK: -- it will be assessed
16 once construction is completed.

17 HEARING OFFICER GEFTER: All right. And
18 with respect to the agreement by which both the
19 school districts are going to share the fee, 75
20 percent, 25 percent, can staff provide those
21 resolutions to us?

22 MS. STENNICK: I spoke with a facilities
23 technician at Tracy Joint Unified School District
24 who told me that there was a resolution that had
25 been in place for a long time, and that the

1 resolution stipulated the percentages that Tracy
2 Joint Unified split with Mountainhouse School
3 District. She was unaware of where she might get
4 a copy of the resolution. I asked her for one.

5 So, I think this is something that the
6 school districts enter into, and both
7 representatives from each respective school
8 district that I spoke to are certainly happy with
9 the way the percentages are working out.

10 So, I don't find that to be an issue. I
11 mean the fees will be paid and they'll be
12 distributed according to the agreement set up by
13 each school district.

14 HEARING OFFICER GEFTER: Mr. Kramer, did
15 you have a comment on that?

16 MR. KRAMER: No.

17 HEARING OFFICER GEFTER: All right. Any
18 cross-examination?

19 MR. GALATI: No questions.

20 HEARING OFFICER GEFTER: Thank you, Ms.
21 Stennick.

22 Okay, Ms. Sarvey would like to address
23 us on this topic.

24 MS. SARVEY: I'm Susan Sarvey. In terms
25 of the subject of socioeconomics, my understanding

1 is that you don't have an impact on the people
2 that are there already, correct?

3 I would request that some land
4 developer, if he goes to put a solar panels on the
5 gym at the Mountainhouse School, because during
6 the bad air seasons with our high rates of asthma,
7 those children will be getting sicker. So we
8 should have them play inside where it's filtered
9 air. And school districts can't afford to do that
10 because they can't afford the electricity to turn
11 on the air conditioner.

12 And since they are so close to the plant
13 I think they should be provided; that way the kids
14 will not get sick because of severe impact on a
15 low income family is to have a child get sick when
16 you have no health care. So let's prevent it
17 before it happens since all this discussion is
18 speculative, anyway. But we know these kids do
19 get sick.

20 Thank you.

21 HEARING OFFICER GEFTER: Thank you. All
22 right. You have a question? On this topic only.

23 MS. AGUIRRE: Socioeconomic. And it
24 would be on the --

25 HEARING OFFICER GEFTER: You need to

1 tell us your name, please.

2 MS. AGUIRRE: My name is Ena Aguirre.

3 I'm concerned about section number 1. First of
4 all, there was no discussion as to whether there,
5 in fact, is an agreement between Alameda County
6 and San Joaquin County. In discussions that I
7 have heard today it is only between Mountainhouse,
8 supposedly because there's no documentation
9 (inaudible) as far as I'm concerned, between
10 Mountainhouse, which is in San Joaquin County
11 proposed -- and Tracy, which is also in San
12 Joaquin.

13 So either what you have here is mis-
14 written and has to be rewritten, or somehow you
15 have to get, you know, the San Joaquin County
16 School District and the Alameda County School
17 District together for the agreement. So I see a
18 problem there, okay. But then that's just me.

19 On number 2, I am concerned that people
20 say, well, we couldn't get a copy of the
21 resolution. Either there is a resolution or there
22 isn't. Either Mountainhouse met as a school
23 district and passed the resolution or they didn't.

24 So, I think I find the whole discussion
25 of number 1 highly questionable. I'm sure that I

1 could get -- you know, I was a school teacher for
2 33 years, okay, so I know how to get a copy of a
3 resolution that has to do with a school district.

4 So, I mean I would feel much better if,
5 you know, if before the end of this whole process
6 that there, in fact, is a copy of that resolution.

7 And my concern only has to do with the
8 relationship between the Mountainhouse students
9 and Tracy Unified School District. It is my
10 understanding that the students at Mountainhouse
11 would be attending, especially the high school
12 students, would be attending Tracy High Schools
13 for the first five years or something like that.

14 So, if, in fact, only 25 percent of the
15 money is going to go to the Tracy Unified School
16 District, you know, unless there is such a
17 resolution, it's all hearsay, and I really think
18 that we deserve better than that.

19 Thank you.

20 HEARING OFFICER GEFTER: Thank you very
21 much for your comment. Are there any other
22 comments on socioeconomics at this time? Okay,
23 thank you.

24 I understand from the record that they
25 amounted, the school developer fees, about \$6600,

1 is that what you remember from the record? So
2 it's not a lot of money that goes to these school
3 districts. However, I agree with the last speaker
4 that it seems that these resolutions can be
5 obtained, and I would like to see them in the
6 record.

7 So the applicant and staff are ordered
8 to obtain documentary evidence, a copy of
9 resolution or some other documents, that shows
10 that the fees will be distributed 75/25 percent.
11 And to get back to the Committee within a week as
12 to your efforts to obtain documentary evidence.

13 And so with that we're going to close
14 the topic of socioeconomics. The record will
15 remain open to receive the document or documents
16 to support the testimony that the fee will be
17 divided 75 percent/25 percent. And that will be
18 the only remaining document pending in this
19 particular topic.

20 And then, Ms. Stennick, I think you are
21 finished. You can leave. And we can close
22 socioeconomics.

23 The next topic is biological resources.
24 And we're going to ask the applicant to begin on
25 that one.

1 MR. GALATI: The applicant filed no
2 testimony on biological resources.

3 HEARING OFFICER GEFTER: And staff's
4 testimony?

5 (Pause.)

6 HEARING OFFICER GEFTER: Are you ready
7 to begin?

8 MR. KRAMER: Yes. He needs to be sworn.

9 HEARING OFFICER GEFTER: Would you
10 please swear the witness. Identify yourself
11 first. Identify the witness and then swear.

12 MR. KRAMER: This is Richard York; our
13 biological resources expert.
14 Whereupon,

15 RICK YORK

16 was called as a witness herein, and after first
17 having been duly sworn, was examined and testified
18 as follows:

19 HEARING OFFICER GEFTER: Mr. Kramer, you
20 may begin.

21 MR. KRAMER: We would submit on his
22 declaration and offer him for cross-examination
23 questions.

24 MR. GALATI: No questions from the
25 applicant.

CROSS-EXAMINATION

BY MR. SARVEY:

Q I had a question. Is staff proposing to provide money to San Joaquin species habitat conservation land for the temporary disturbance; I believe it's 67 acres of land in San Joaquin for the recycled water pipeline? Do we have a proposal for that?

A Staff's written a condition holding the project owner to provide funds to the San Joaquin County Council of Governments who administers the multi-species plan program.

Q Is there any dollar amounts memorialized in that?

A No. I consulted the staff again; we consulted them a year ago, consulted them while I was doing this supplemental testimony. They were not interested in determining at this time whether or not they would be providing -- requiring any additional compensation. Apparently that's their standard procedure.

As a result we've written the condition holding the project owner and the San Joaquin County Council of Governments to, as part of the building permit process they will be part of that

1 review and approval process. At that time they
2 will determine whether or not any additional
3 compensation for the San Joaquin County portion of
4 the water line, whether or not there will be any
5 additional compensation.

6 Q So, staff, themselves, is not proposing
7 a figure, then?

8 A We're not proposing a dollar amount.
9 We're proposing a method for assuring that if
10 compensation is required by that program, that the
11 project owner will provide us verification that
12 they have, indeed, provided the required funds.

13 MR. SARVEY: Thank you, that's all I
14 have.

15 EXAMINATION

16 HEARING OFFICER GEFTER: Mr. York, on
17 that topic again, with respect to the new language
18 and condition Bio-16, I believe that's where
19 you've added additional language to deal with the
20 temporary impacts to San Joaquin -- I believe it
21 was in your comment -- it's at page 33 of exhibit
22 128.

23 It's in this proposed new language added
24 to the verification. What I'm concerned about is
25 actually condition Bio-16 contains some language

1 that indicates that the applicant will be required
2 to make any kind of compensation payment that the
3 Council of Governments requires. And there's
4 nothing actually in the language or the condition,
5 itself, that makes that requirement; so that in
6 the future when compliance unit is looking at
7 compliance with this particular condition, and
8 even the applicant is looking at what they need to
9 do, it's not that clear that they must, you know,
10 comply with requirements of San Joaquin Council of
11 Governments if they find that compensation is
12 necessary.

13 So, I would suggest that we have new
14 language and Bio-16 be revised, as well. Do you
15 follow what I'm getting at?

16 MR. YORK: I think the condition does
17 hold them to provide us verification that they
18 have done what the Council of Governments --

19 HEARING OFFICER GEFTER: Yeah, I'm not -
20 - I understand you're talking about verification,
21 but I'm talking about the actual requirement --

22 MR. YORK: The condition language --

23 HEARING OFFICER GEFTER: -- the
24 condition, itself, yes.

25 MR. YORK: We consulted the compliance

1 staff here today. As you know, we look at our
2 conditions on a regular basis and we try to
3 improve upon them. This is something that the
4 compliance staff and technical staff re-analyzed
5 again because it's been several months since we
6 were at the staff analysis for this case. And
7 this was the language that we felt was better and
8 clarified things better than the original version.

9 So that's why we were hoping we could
10 get these changes made at this time, as part of
11 these proceedings.

12 MR. GALATI: Ms. Gefter, the condition
13 requires that we demonstrate that we're in
14 compliance with the San Joaquin multi-species
15 habitat conservation and open space plan, because
16 compliance would not be habitat compensation.

17 So if it is habitat compensation or
18 whatever else the San Joaquin Council of
19 Governments decides during its process, we still
20 need to prove that we've complied with it. And so
21 I would object to requiring compensation there or
22 any relevant compliance. And that's the real
23 issue, as we're not sure exactly what compliance
24 would that plan, what form it will take.

25 HEARING OFFICER GEFTER: I understand

1 that. But I think that it's not -- compliance
2 with the plan is one thing. Compliance with a
3 requirement to provide compensation is different.
4 It's not the plan you're complying with, you know.
5 And so I think the language needs to include the
6 possibility that the applicant may be responsible
7 for providing compensation, because I think the
8 applicant could come in and say, well, we're
9 complying with the plan, the open space plan.
10 That's a different thing.

11 So, I'd like to see clarification in the
12 Bio language and ask the parties to get together
13 during a recess and come up with some language
14 they can agree on. You can talk about it later,
15 as well.

16 MR. GALATI: Okay, I have a proposal
17 right now.

18 MR. YORK: More than willing to improve
19 on the conditions. If you have some suggested
20 edits, we'd entertain them, as well.

21 HEARING OFFICER GEFTER: Okay.

22 MR. YORK: I'm not sure how you want to
23 handle this for today, or if it's okay to sort of
24 do these behind the scenes, I'm not sure.

25 HEARING OFFICER GEFTER: Okay, well, let

1 me ask Mr. Galati. You just indicated you had a
2 proposed language that you would like to offer
3 right now?

4 MR. GALATI: Yeah, I mean what I would
5 offer is that we provide -- where it says we shall
6 provide written verification to the CPM that the
7 project is in compliance with the San Joaquin --
8 then we say, that the San Joaquin Council of
9 Governments has determined the project is in
10 compliance with the San Joaquin multi-species
11 habitat conservation and open space plan.

12 That way it's not us saying we're
13 complying; the San Joaquin Council is saying it.

14 MR. YORK: That would be fine.

15 HEARING OFFICER GEFTER: Okay. Yeah, I
16 think that would clarify it; that would be fine.
17 We would accept that language, too. If you want
18 to write that out for the Committee at some point
19 during recess, and we will get it --

20 MR. GALATI: And we can just read it
21 into the record, sure.

22 UNIDENTIFIED SPEAKER: Would you restate
23 the language?

24 HEARING OFFICER GEFTER: Yeah, Mr.
25 Galati will write it out and state it for the

1 record during a recess. Right now we need to move
2 through this topic. Thank you.

3 All right, I do have another question,
4 Mr. York, on your testimony. Regarding the
5 changes to table 3, which you offered in your new
6 testimony here, it's at page 7 --

7 MR. YORK: Yes, table 3, page 7.

8 HEARING OFFICER GEFTER: -- of exhibit
9 128, looking at the table I'm not sure where you
10 made the changes to the original table 3. Would
11 you indicate that to me, please, on the record.
12 The table doesn't show any redline/strikeout.

13 MR. YORK: I'm looking at page 2-65

14 HEARING OFFICER GEFTER: Page 65 of the
15 PMPD?

16 MR. YORK: -- of your draft PMPD.
17 Originally table 3 included the water supply
18 pipeline originally proposed by the applicant.
19 Now they're using the reclaimed water line. One
20 of the changes would be for grassland habitat you
21 have zeroes in both of those, the temporary and
22 the permanent category. And under agricultural
23 and what we're suggesting adding to that column,
24 rural lands acres, you would have 66.7 acres under
25 temporary.

1 So that's about halfway down the table.
2 Your request was to edit that table, and you've
3 added some lines. I have consolidated it and
4 combined those.

5 HEARING OFFICER GEFTER: Okay, I see.
6 And then in addition where you have under power
7 plant and construction laydown area there will be
8 no permanent or temporary impacts in that area.
9 Whereas, originally it was unclear.

10 MR. YORK: Correct. Then there would be
11 changes to the totals, the permanent grassland
12 habitat total would go from 28.3 down to 27.8.
13 And then the final total under temporary
14 agricultural impacts, with the addition of the
15 reclaimed water pipeline, total goes from 7.7 to
16 74.4.

17 HEARING OFFICER GEFTER: All right. And
18 so the total amount of temporary impacts, the
19 total amount of acreage is 74.4. And is that all
20 in San Joaquin County?

21 MR. YORK: That's total for the whole --

22 HEARING OFFICER GEFTER: But it doesn't
23 break it down which --

24 MR. YORK: No, it doesn't --

25 HEARING OFFICER GEFTER: -- counties?

1 MR. YORK: -- break that down by county.

2 HEARING OFFICER GEFTER: And that would
3 occur when they discuss it with the San Joaquin
4 County?

5 MR. YORK: Well, the number won't change
6 much, if any.

7 HEARING OFFICER GEFTER: Yeah, right.

8 MR. YORK: But whether or not they have
9 to provide compensation for some of the things
10 Scott was referring to, there will probably be
11 mitigation measures if there is compensation or
12 not. There will be biology-related guidance to
13 them that they'll have to abide by during
14 construction on the pipeline. Those kind of
15 measures will be incorporated in their
16 mitigation -- plan. So there's a variety of
17 things that they'll be doing, but they will not be
18 changing the acreage amount.

19 Right now they agree with what analysis
20 that we've provided as far as --

21 HEARING OFFICER GEFTER: Do they --

22 MR. YORK: -- the 50-foot wide work
23 corridor and the length of the pipeline.

24 HEARING OFFICER GEFTER: The county
25 agrees with what staff has proposed?

1 MR. YORK: They agree with the way
2 things are right now, yes.

3 HEARING OFFICER GEFTER: Okay.

4 MR. YORK: I ran the conditions by them;
5 consulted them on more than one occasion.

6 HEARING OFFICER GEFTER: Okay. Are
7 there any other questions of Mr. York? Okay, so -
8 - do you have a question?

9 MR. GALATI: I have taken an opportunity
10 to write that amendment out.

11 HEARING OFFICER GEFTER: Excellent.

12 MR. GALATI: If we could -- is it best
13 to give it to Mr. York and ask him to read it into
14 the record so it comes out of someone's mouth
15 who's accurate and truthful?

16 (Laughter.)

17 HEARING OFFICER GEFTER: We have staff
18 agreeing to this language and offering it.

19 If you have any amendments, Mr. York,
20 you can include those, too.

21 MR. KRAMER: Now this is intended to be
22 in the top part of the condition above the
23 verification?

24 HEARING OFFICER GEFTER: Page 2-95 of
25 the PMPD.

1 MR. GALATI: Correct. It's modifying,
2 the way I wrote it it modifies the whole
3 condition. I tried to show what was inserted so
4 that what you have in front of you is the whole
5 condition. And then the verification stays as
6 you've written it.

7 MR. YORK: So you're recommending
8 putting it in the verification or the condition?

9 MR. GALATI: That becomes the condition.
10 And we leave the verification alone, as you have
11 suggested to amend it.

12 MR. YORK: I agree with this language.

13 PRESIDING MEMBER GEESMAN: Why don't you
14 read it into the record.

15 MR. YORK: So Bio-16, the condition
16 language will read: The project owner must
17 provide written verification to the compliance
18 project manager that the San Joaquin Council of
19 Governments has determined that the project is in
20 compliance with the multi-species conservation
21 plan prior to the start of any project-related
22 construction activities."

23 MR. KRAMER: And then the verification
24 would be as proposed by staff at page 33 of
25 exhibit 128.

1 HEARING OFFICER GEFTER: Thank you. Any
2 other questions of Mr. York? Hearing none, Mr.
3 York is excused and the topic of biological
4 resources is closed.

5 At this point I don't have any
6 indication that there is public comment on
7 biological resources. Mrs. Sarvey, you do have a
8 comment? Okay, I'm sorry.

9 MS. SARVEY: I'm Susan Sarvey. I just
10 spoke on the phone with Mr. Jerry Park at the
11 Council of Governments for San Joaquin County.
12 And he oversees the species conservation plan for
13 multi habitats. And I just wanted to give you his
14 phone number because he's very interested in
15 talking with you. His phone number is 468-3913,
16 area code 209. Thank you.

17 HEARING OFFICER GEFTER: Thank you.

18 MR. YORK: Mr. Park is my contact.

19 HEARING OFFICER GEFTER: Okay.

20 MR. YORK: I believe I provided his
21 phone number, also.

22 HEARING OFFICER GEFTER: Thank you. Mr.
23 York, you're excused and you're free to leave.

24 Do you have a question on biological
25 resources?

1 MS. AGUIRRE: Right. It's basically
2 like the one before, I mean I think it's nice for
3 a company or an agency when they can take, you
4 know, the responsibility that they have something
5 in writing and give it to somebody else. I think
6 it's wonderful. So that it doesn't become a
7 requirement, you know, the issue was compliance
8 basis requirement.

9 And so what the power plant people did
10 is they found the San Joaquin County Council of
11 Governments to say that they are the ones that are
12 going to be, you know, that if anything goes wrong
13 that they are the ones that have checked out
14 everything that needs to be checked out.

15 My concern with this is, I mean I have a
16 concern with the power plant found, you know, the
17 San Joaquin Council of Governments to take up that
18 responsibility. What I don't, because I don't
19 have a lot of documents, I don't know whether
20 there is, in fact, a resolution in writing that
21 you have all received that the Council of
22 Government has met and they have passed some kind
23 of a resolution saying that, you know, they have
24 accepted this responsibility instead of the power
25 plant.

1 And, you know, so unless I misunderstood
2 what was being said, there should be some kind of
3 a resolution in writing saying that they are going
4 to be the ones that are going to be checking it
5 out. So it would be nice to see that kind of a
6 resolution if there is one.

7 Thank you.

8 HEARING OFFICER GEFTER: Thank you. Mr.
9 York, did you want to explain the role of the San
10 Joaquin County Council of Governments in this?

11 MR. YORK: San Joaquin County is blessed
12 and cursed with a long list of threatened and
13 endangered species. And what they have done is
14 established a program to deal with mitigating
15 development impacts on endangered and threatened
16 species.

17 It's a program that we've used for the
18 Ripon Power Plant project. It's part of the local
19 permit process that the County and the Cities will
20 go through for this project when the applicant is
21 ready to get these permits. They are a program
22 that's there to insert themselves at the proper
23 time. They send a biologist out to do their own
24 assessment; report back; look at the habitat
25 quality; location of the project. They look at

1 the biology information that was provided by, in
2 this case it would be the information that we
3 provided in our spring surveys last year. And
4 they do their own assessment and determine whether
5 or not there is a requirement for any additional
6 habitat compensation and, as I mentioned earlier,
7 specific take avoidance mitigation measures that
8 will be implemented during the construction of the
9 project.

10 So it is a good tool that's available to
11 developers. We've use it on actually three power
12 plant projects now. We're not shoving this off on
13 anybody else; it's part of the process. We, for
14 economy's sake, tend to want to take advantage of
15 these programs. They are good programs and they
16 offer to us guidance on what we should include in
17 our conditions of certification, and offer surety
18 to the project developers as to how they're
19 supposed to behave under certain circumstances,
20 whether it's a new power plant or a pipeline
21 project.

22 HEARING OFFICER GEFTER: Thank you very
23 much. And I also want to clarify for the record,
24 because I had closed the topic of biological
25 resources and excused you as a witness, and now I

1 am accepting your testimony. And so that is
2 incorporated into the record on biological
3 resources. Thank you very much.

4 MS. AGUIRRE: But my question was not
5 answered.

6 HEARING OFFICER GEFTER: Okay, well,
7 we'll talk -- what I would propose is perhaps you
8 can talk to Mr. York off the record and --

9 MS. AGUIRRE: Okay, and then --

10 HEARING OFFICER GEFTER: -- perhaps he
11 can explain it to you.

12 MS. AGUIRRE: -- we can get -- okay.
13 Thank you.

14 HEARING OFFICER GEFTER: Okay, thank you
15 very much. Mr. York, you can be excused now.

16 The next topic is fire protection and
17 worker safety. Does applicant have any testimony
18 on this topic?

19 MR. GALATI: We have no testimony on
20 that topic.

21 HEARING OFFICER GEFTER: Mr. Kramer, are
22 you ready to proceed on fire protection and worker
23 safety?

24 MR. KRAMER: Yes. Our witness is Dr.
25 Alvin Greenberg. We're willing to submit his

1 testimony on declaration unless there are
2 questions.

3 HEARING OFFICER GEFTER: Okay. Dr.
4 Greenberg was previously sworn in this proceeding
5 and remains available to testify under oath. Yes.

6 Is there any cross-examination of the
7 witness.

8 MR. SARVEY: Yes, I have some questions.

9 HEARING OFFICER GEFTER: Okay.
10 Whereupon,

11 ALVIN GREENBERG
12 was recalled as a witness herein, and having been
13 previously duly sworn, was examined and testified
14 further as follows:

15 CROSS-EXAMINATION

16 BY MR. SARVEY:

17 Q Dr. Greenberg, do you have a status
18 report for us on the East Altamont Energy Center's
19 funding of the firehouse on Greenville Road yet?

20 A Have you read my testimony, Mr. Sarvey,
21 the new testimony?

22 Q Yes, sir, I have.

23 A The only status report I have is that
24 there has been no funding made as of this date by
25 Calpine to Alameda County Fire Department in

1 regards to East Altamont.

2 MR. SARVEY: And I also had a question
3 that this may be related to public health rather
4 than worker safety, although it does involve the
5 workers safety. I don't know if this is the
6 appropriate time to ask that question or not, so
7 should I just ask it and then we'll either move it
8 to the public health section or not?

9 MR. KRAMER: We won't know till you ask.

10 MR. SARVEY: Sorry.

11 BY MR. SARVEY:

12 Q Dr. Greenberg, have you instituted any
13 special safety measures for the construction
14 workers for Valley Fever?

15 A For Valley Fever.

16 Q Yes, sir.

17 A No special considerations at this
18 particular facility. We are aware of the issues;
19 it has come up at other power plants in the state
20 in the Central Valley. CalOSHA has, indeed,
21 investigated it and we believe that the current
22 CalOSHA regulations, as does CalOSHA believe, that
23 the current regulations are adequate to protect
24 against Valley Fever if they are enforced and
25 implemented.

1 We are considering whether or not to
2 send out any type of general warning. At this
3 time no decision by management has been made on
4 that.

5 Q Were you aware that of the 36 cases of
6 Valley Fever last year in San Joaquin County, 24
7 of them were in the City of Tracy -- for
8 construction workers?

9 MR. GALATI: I'd like to entertain an
10 objection at this point. We had public health and
11 worker health and safety previously in this
12 proceeding. My understanding is that the record
13 was left open to answer these particular
14 questions. And that this is not an opportunity to
15 re-try this case in front of the Committee on
16 issues such as this.

17 I let the first question go, but I just
18 wanted to also get a general ruling on that for
19 the rest of the way we conduct the other topics in
20 this evidentiary hearing.

21 HEARING OFFICER GEFTER: Mr. Sarvey, I
22 agree with Mr. Galati that, you know, basically
23 we're far afield in terms of the topics that we
24 were covering today. I know you are concerned
25 about Valley Fever, and perhaps this is

1 something -- it's not part of our record, it was
2 never discussed at the original hearing.

3 Where are you going with this --

4 MR. SARVEY: Well, essentially I just
5 want to offer to the record that I wasn't aware of
6 it, myself, until March 27th. And I think it's
7 important that we protect the workers.

8 I'd also note that I just want to offer
9 the article to the Committee. You can take it as
10 an exhibit or public comment, but I just thought
11 it should be part of the record administratively
12 or evidentiary, whatever you feel is appropriate.

13 HEARING OFFICER GEFTER: Well, we'll
14 accept it as public comment.

15 MR. SARVEY: Okay.

16 HEARING OFFICER GEFTER: And also, you
17 know, under the conditions of certification for
18 worker safety the applicant is required to comply
19 with all the CalOSHA requirements, the health and
20 safety plans that are in place. And because this
21 project is being built in San Joaquin Valley, this
22 would probably be part of that consideration.

23 MR. SARVEY: Thank you.

24 HEARING OFFICER GEFTER: Thank you very
25 much. Do you have any other questions of the

1 witness at this point?

2 MR. SARVEY: No further questions, thank
3 you, Dr. Greenberg.

4 DR. GREENBERG: You're welcome, Mr.
5 Sarvey.

6 HEARING OFFICER GEFTER: Okay. Does
7 applicant have any questions?

8 MR. GALATI: No.

9 HEARING OFFICER GEFTER: Yeah, we're on
10 fire protection right now. All right. At this
11 point are there any public comments on the
12 testimony provided by Dr. Greenberg regarding fire
13 protection only?

14 Mrs. Sarvey.

15 MS. SARVEY: Susan Sarvey. In relation
16 to fire protection I think the whole fire
17 protection issue is kind of in jeopardy because
18 everything we heard about was based on that there
19 was this new fire station that has not even
20 commenced construction. So we have no fire
21 station over there. So we need to go back to
22 addressing the issue of Tracy being able to
23 provide time-effective, confined-space rescue and
24 hazmat to protect our people in case we need to be
25 warned to close our doors and windows.

1 In relation to what just was discussed
2 with Mr. Greenberg, I understand that it's not
3 fair, but this study just came out. It was just
4 in the paper on March 27th about the construction.
5 That does affect firefighters, anybody that's in
6 the construction zone breathing that air. So I'd
7 just ask that we docket it. And I brought you all
8 copies. And this is the original Stockton Record
9 article. I think it's very disturbing that there
10 was 36 cases and 24 of them are right here in
11 Tracy. So, I think it is very relevant to worker
12 safety and to any person that has to provide
13 emergency response, which you could have to do in
14 relation to someone having Valley Fever.

15 Thank you.

16 HEARING OFFICER GEFTER: Thank you.

17 EXAMINATION

18 HEARING OFFICER GEFTER: Dr. Greenberg,
19 in your testimony you had reported that the Tracy
20 Fire Department has begun to staff the new
21 Mountainhouse Fire Station?

22 DR. GREENBERG: Hearing Officer Gefter,
23 what they are doing is they have an engine
24 already, and they have it located at the existing
25 firehouse on Schulte Road. They will, once the

1 new firehouse on -- excuse me for a second, let me
2 look at -- I'm just looking at the -- Mascot,
3 that's the word I was looking for. Once the new
4 station is built at the end of this year,
5 beginning of next year, on Mascot, they will
6 transfer that engine and staff over to the new
7 firehouse.

8 It has not yet been built; however, I do
9 wish to let the Committee know there's a wonderful
10 sign out there depicting the exact location of the
11 new firehouse on Mascot Road.

12 HEARING OFFICER GEFTER: That new
13 firehouse on Mascot is not included on your table
14 on page 10 of your testimony, exhibit 128?

15 DR. GREENBERG: Correct, it is not on
16 there, but if you'd like some specifics I can give
17 you some specifics because I have driven the
18 distance. And the new location would be 6.6 miles
19 distant to the Tesla site. And it took me nine
20 minutes, again consistent with the other distances
21 and times on the table. This was driving in my
22 private car, not code 3, and obeying all speed
23 limits and traffic signs. So it would take
24 emergency vehicles somewhat less than that.

25 HEARING OFFICER GEFTER: Thank you. Any

1 other questions on this particular topic?

2 MR. GALATI: Not from the applicant.

3 MR. SARVEY: No more questions.

4 HEARING OFFICER GEFTER: No, all right.

5 Thank you, Dr. Greenberg, the topic of fire
6 protection and worker safety is closed. We will
7 docket the copy of the newspaper article presented
8 by Mr. and Mrs. Sarvey as public comment, the
9 newspaper article regarding Valley Fever.

10 Now before we move on to the topics of
11 water resources, air quality and public health,
12 which are going to take up the rest of the
13 afternoon, I had a note from Mrs. Sundberg who
14 indicates that she needs to leave, but she has a
15 comment regarding to procedure which occurred at
16 the other previous evidentiary hearing.

17 So, at this point we'll take Mrs.
18 Sundberg's comment.

19 MS. SUNDBERG: Irene Sundberg, Tracy,
20 California. On the 18th, the last hearing, I
21 spoke on public comment in the morning about the
22 concerns that I had about -- for a hearing. After
23 speaking I had hoped things would be better on as
24 the afternoon proceeded.

25 But soon to my shock Mrs. Sarvey stood

1 up to question Mr. Jang from BARQMB (sic) out of
2 Berkeley. Before he had time to leave and was
3 talking about mitigation, he gave, for example,
4 the Legionnaire's Disease breakout in air. Mr.
5 Yang testified that they do not model for the
6 biological air quality incidents, only for the
7 chemicals.

8 I felt this was very important to have
9 that put into the record; but, unfortunately, at
10 that point in time, our Hearing Officer, Ms.
11 Gefter, decided that to censor Mrs. Sarvey's
12 comments.

13 At that point in time she told her that
14 she could ask the questions and that Ms. Gefter
15 would decide if they were pertinent to the
16 hearing. I believe this is very inappropriate. I
17 believe that we have a first right amendment, it's
18 to free speech. And I believe it also pertains to
19 public comment.

20 I would like you to make sure that as a
21 Committee that all of those comments that were
22 made by Ms. Sarvey are put into the record
23 appropriately, word-for-word, because that is the
24 right of the people.

25 I want to also tell you how much I

1 appreciate letting me speak early today because
2 I've been very ill. And thank you for your time.

3 HEARING OFFICER GEFTER: Thank you.

4 Water will be the next topic.

5 Let's go off the record.

6 (Brief recess.)

7 HEARING OFFICER GEFTER: Back on the
8 record. We're going to proceed with the topic of
9 water resources. We'll begin with the applicant.

10 MR. GALATI: I'd like to call Mr. Scott
11 Busa and Duane McCloud; they have both been
12 previously sworn. I'll direct most of my
13 questions to Mr. McCloud.

14 Whereupon,

15 SCOTT BUSA and DUANE McCLOUD
16 were recalled as witnesses herein, and having been
17 previously duly sworn, were examined and testified
18 further as follows:

19 DIRECT EXAMINATION

20 BY MR. GALATI:

21 Q Mr. McCloud, are you familiar with
22 exhibit 177, entitled supplemental testimony of
23 Duane McCloud and Scott Busa on water resources?

24 MR. McCLOUD: Yes, I am.

25 MR. GALATI: Do you have any additions

1 or changes to that testimony at this time?

2 MR. McCLOUD: No, I do not.

3 MR. GALATI: No further questions.

4 They're available for cross-examination. The
5 exhibit is already entered into the record.

6 MR. KRAMER: We have no questions.

7 When would be a good point, though, to
8 discuss the further changes we wanted to make to
9 the conditions?

10 HEARING OFFICER GEFTER: We're going to
11 get to it when staff testifies.

12 MR. KRAMER: Okay.

13 HEARING OFFICER GEFTER: Okay. Do the
14 intervenors have questions of the applicant's
15 witnesses? Bob Sarvey.

16 MR. SARVEY: One second to finish this.

17 HEARING OFFICER GEFTER: Unless the
18 parties all agree. Do all the parties agree that
19 instead of Mr. Sarvey he's going to ask his expert
20 witness, Mr. Bill Powers, to ask the questions.
21 Do you have objection to that?

22 MR. GALATI: Actually I do have an
23 objection to that.

24 HEARING OFFICER GEFTER: All right, I
25 was --

1 MR. GALATI: I have an objection because
2 that might -- probably should allow my experts to
3 just battle, and I don't think that's how the
4 process works. Mr. Sarvey's been involved in
5 several projects and so has Mr. Boyd. They can
6 ask the questions given by their witness and
7 cross-examine as intervenors.

8 HEARING OFFICER GEFTER: Mr. Kramer, do
9 you have objection --

10 MR. GALATI: Or they can hire counsel to
11 do so.

12 MR. KRAMER: We're neutral.

13 (Pause.)

14 HEARING OFFICER GEFTER: Mr. Galati,
15 your objection is noted, and generally we would
16 agree with your objection. In this case it would
17 appear that Mr. Sarvey would be asking Mr. Powers
18 every time what the question should be. So in
19 order to make it more efficient we'll just hear it
20 from Mr. Powers' mouth.

21 So, Mr. Powers, you can go ahead. And
22 you basically are a surrogate for Mr. Sarvey on
23 these questions regarding the water.

24 MR. POWERS: Yes, I would like to direct
25 the question at comment number 5, which is

1 applicant estimates the capital cost of its
2 proposed cooling tower installation would be about
3 \$18 million. And there's a paragraph that
4 describes what the logic is behind that. The
5 final sentence is: We believe that the cost
6 difference in the option shown to be accurate,
7 even though we acknowledge the absolute values
8 given are too low for a total system cost."

9 HEARING OFFICER GEFTER: Okay, what page
10 is that?

11 MR. POWERS: That's page 2.

12 HEARING OFFICER GEFTER: Okay.

13 MR. POWERS: It's the last full
14 paragraph of page 2.

15 HEARING OFFICER GEFTER: Yes. Ask your
16 question.

17 CROSS-EXAMINATION

18 BY MR. POWERS:

19 Q This issue had actually come up in the
20 testimony that I provided earlier, that --

21 HEARING OFFICER GEFTER: Wait, Mr.
22 Powers. You're going to ask questions, you're not
23 going to make comments or give testimony.

24 MR. POWERS: Okay, the question is --

25 HEARING OFFICER GEFTER: Just ask your

1 question.

2 MR. POWERS: There's no detail, there's
3 no backup provided to justify the statement that
4 we believe these cost options to be accurate.
5 What I mean is there's no information from vendors
6 of cooling tower systems for a 22-cell, plume-
7 abated tower that gives us some indication of what
8 the cost is; whether you're talking, you seem to
9 be indicating --

10 HEARING OFFICER GEFTER: Mr. Powers,
11 wait, --

12 MR. GALATI: Is the question --

13 HEARING OFFICER GEFTER: -- let me --
14 reframe the question. You are again basically
15 giving your comment and your testimony.

16 MR. POWERS: Okay.

17 HEARING OFFICER GEFTER: The question is
18 on what basis are they making this statement.
19 What is their basis --

20 MR. POWERS: Correct.

21 HEARING OFFICER GEFTER: -- for making
22 this statement. Okay, Mr. Busa?

23 MR. McCLOUD: McCloud.

24 HEARING OFFICER GEFTER: Or, Mr.
25 McCloud.

1 MR. McCLOUD: As indicated in the
2 response here this was a fairly straightforward
3 gross-up of only the major costs for the cooling
4 tower versus the air cooled condenser. It's not a
5 full system design. The basis for this, and again
6 it's not detailed in the testimony -- and that
7 really was not asked to be detailed in the
8 testimony, so that's why it's not -- was estimates
9 we had on cost of an air cooled condenser versus
10 costs of a cooling tower from a variety of
11 manufacturers when we were doing the original work
12 for the power plant. The numbers that I used here
13 and reiterated were straight out of the AFC.

14 MR. POWERS: Would it be possible for
15 the applicant to provide those cost estimates from
16 cooling tower vendors?

17 MR. GALATI: I would object to that.
18 The discovery in this proceeding is over. The
19 entire cost estimate package was responded to in
20 the AFC, as well as in numerous data responses.
21 The time for discovery ended before evidentiary
22 hearings began.

23 HEARING OFFICER GEFTER: Your objection
24 is sustained. You can ask another question.

25 MR. POWERS: Next question relates, next

1 paragraph down, same page, where the cost of the
2 ZLD system, capital operating costs, indicating a
3 larger system for a wet system, smaller system for
4 dry cooled system.

5 Are the ZLD treatment costs for the
6 smaller system related exclusively to boiler blow-
7 down treatment? Is there any dry cooling
8 component to that treatment?

9 MR. McCLOUD: Yes, there is. The
10 assumption still is that you would have inlet
11 cooling going to your combustion turbines for this
12 project, due to the hot summer temperatures, low
13 humidity conditions, a tremendous amount of power
14 is made available if the inlet air is cool.

15 So the assumption here is it would
16 either be done through conventional evaporative
17 cooler or it would be done through what's known as
18 a fogging system.

19 MR. POWERS: So you're presuming this 10
20 percent is not to treat boiler blow-down, it's to
21 treat some type of spray, evaporative spray
22 system?

23 MR. McCLOUD: Yeah, the majority of it
24 is for that. Some of it is boiler blow-down, but
25 the majority of it, it would be water required for

1 in the cooling.

2 MR. POWERS: Is that stated anywhere
3 prior to this particular document?

4 HEARING OFFICER GEFTER: You mean --

5 MR. McCLOUD: The breakdown on water
6 usage is in the AFC. It's broken down obviously
7 for a wet system; however, the water breakdown
8 that would go to other uses in the plant that are
9 not direct cooling tower is also on that chart.

10 MR. POWERS: But does that specifically
11 state some of that water is going to an
12 evaporative cooling system for an air cooled
13 condenser?

14 MR. McCLOUD: Yes, it specifically gives
15 the breakdown of various conditions of the amount
16 of water that would go to the inlet cooling
17 process, yes.

18 MR. POWERS: No further questions.

19 HEARING OFFICER GEFTER: Mr. Boyd, did
20 you have questions? Okay.

21 Staff, did you have any questions of the
22 applicant's witnesses?

23 MR. KRAMER: No.

24 MR. GALATI: No redirect from the
25 applicant.

1 HEARING OFFICER GEFTER: All right.

2 Let's move on then to staff's witness.

3 MR. KRAMER: We would offer the
4 testimony of John Kessler and Tony Mediati, with
5 one correction that I'll note for you.

6 HEARING OFFICER GEFTER: Okay, and
7 that's part of exhibit 128, or page 20?

8 MR. KRAMER: It begins on page 20; on
9 page 24 in the response to question 6 near the
10 bottom, it says: The City provided the applicant
11 with a draft agreement in December of 2004."
12 That's a typo. It should be December 2003.

13 And at the appropriate time we want
14 to -- maybe this is the appropriate time. Exhibit
15 128A, which was previously admitted, is staff's
16 response to the proposed changes that the
17 applicant provided for the soil and water
18 conditions in its comments on the PMPD.

19 We reflected those in here. And then
20 added some more of our own that the staff thought
21 were appropriate. And Mr. Galati will correct me
22 if I'm wrong, but I believe that the applicant is
23 in agreement with these changes, provided that
24 where the term potable water is used, we
25 substitute the term fresh water.

1 MR. GALATI: I think that's accurate.

2 HEARING OFFICER GEFTER: Why? Why would
3 you substitute potable for fresh? Or fresh for
4 potable?

5 MR. GALATI: First, it follows it was
6 originally written as fresh. Staff, in this
7 document, changed it to potable. What all of the
8 conditions working together do, allow an interim
9 water supply from the City of Tracy, as well as
10 allow backup water in certain circumstances.

11 It doesn't make sense to us that the
12 City of Tracy should have to treat that water to
13 potable before they give it to us. So, fresh
14 water might be in their best interests, to just
15 give us whatever they have.

16 MR. KRAMER: We see it as providing more
17 flexibility without any consequences, adverse
18 consequences.

19 HEARING OFFICER GEFTER: And testimony
20 as submitted by applicant indicates that potable
21 water will be provided by hauling it in.

22 MR. GALATI: We would not be using that
23 because, again, this is only being used as interim
24 and backup.

25 MR. KRAMER: Right, this is the cooling

1 water, not the domestic water.

2 MR. GALATI: With that modification the
3 applicant is in agreement with all of the
4 conditions identified in exhibit 128A.

5 HEARING OFFICER GEFTER: Okay.

6 MR. KRAMER: I have extra copies if
7 anyone needs one.

8 HEARING OFFICER GEFTER: Are your
9 witnesses going to testify, or are you submitting
10 their testimony on declaration?

11 MR. KRAMER: We're submitting their
12 testimony by declaration. They were previously
13 sworn.

14 HEARING OFFICER GEFTER: Yes.

15 MR. GALATI: No cross-examination.

16 HEARING OFFICER GEFTER: Intervenors, do
17 you have cross-examination of the staff's
18 witnesses?

19 MR. POWERS: Yes, I have a number of
20 questions related to soil and water resources
21 appendix table 5A.

22 HEARING OFFICER GEFTER: And that's at
23 exhibit 128, page 21.

24 MR. POWERS: Right. And I'm limited to
25 explicitly commenting on line-by-line issues in

1 this.

2 HEARING OFFICER GEFTER: You're limited
3 to asking questions. If you're going to make
4 comment it would either be public comment, or
5 rebuttal testimony.

6 CROSS-EXAMINATION

7 BY MR. POWERS:

8 Q My only question is -- the questions
9 that I have relate to the expert testimony I gave
10 that covers the same thing. Okay, I'll just go
11 by --

12 HEARING OFFICER GEFTER: Yeah, --

13 MR. POWERS: It doesn't matter, it
14 doesn't matter.

15 The question is for staff. Looking at
16 this table, economic summary of alternatives 3, 4
17 and 5. What I'd like to do is just walk down the
18 estimates that you've got for Tracy, which is --
19 you've got, second column, and then you've got
20 your high estimate on dry cooling to the far
21 right.

22 You've got, first dollar item you've got
23 is 4.4 million for water to come to the plant.
24 And the question is, do you assume in your
25 analysis that any of this water was going to be

1 used by the dry cooling system? And that includes
2 evaporative cooling, potentially -- did you assume
3 -- better question -- that any of this water was
4 going to be used in an evaporative cooling system
5 for the air cooled condenser?

6 MR. KESSLER: Yes.

7 MR. POWERS: You did. Is there a
8 breakout that you could provide on --

9 MR. KESSLER: I believe in the FSA that
10 we've captured what the applicant provided in
11 terms of their plant water use. And the 5100
12 acrefeet per year water use includes that inlet
13 cooling.

14 MR. POWERS: For evaporative cooling?

15 MR. KESSLER: Yes.

16 MR. POWERS: Do you feel, either you
17 personally or the CEC, cooling votes, that
18 evaporative cooling is essential to this
19 installation, or is it optional?

20 MR. KESSLER: With respect to inlet
21 cooling?

22 MR. POWERS: Well, you've got an air
23 cooled condenser. I'm saying do you -- the reason
24 this is an important question is you've assigned
25 \$4.4 million to the ACC. The question is, is any

1 of this water that you're piping that accounts for
2 this 4.4 million essential to the operation of air
3 cooled condenser? Or is it an optional
4 evaporative cooling system that you could or could
5 not use?

6 MR. KESSLER: Well, first off, the \$4.4
7 million has to do with the proposed project; the
8 fresh water supply?

9 MR. POWERS: Right.

10 MR. KESSLER: And I believe your
11 questions wanted to be tailored towards the Tracy
12 alternative? A reclaimed --

13 MR. POWERS: I can barely hear you.

14 MR. KESSLER: I'm sorry, I've got a
15 cold. So I'll do my best.

16 MR. POWERS: No, if you put the mike
17 closer I can hear you fine. You're just not
18 getting picked up by the mike.

19 MR. KESSLER: Is your question related
20 to just generic to all alternatives, or is it
21 specific to Tracy?

22 MR. POWERS: No, I'll be specific on the
23 question. Is that just -- we got --

24 HEARING OFFICER GEFTER: Wait, Mr.
25 Powers. Which line are you looking at?

1 MR. POWERS: I'm looking at line 4,
2 column -- the far right column where it says \$4.4
3 million. It's assigning \$4.4 million to an air
4 cooled condenser option.

5 HEARING OFFICER GEFTER: Um-hum.

6 MR. POWERS: My point is an air cooled
7 condenser uses no water. That the plant, yes,
8 needs water for steam blowdown, replacement, et
9 cetera, or boiler water blowdown. That's
10 plantwide cost.

11 My point is the air cooled condenser
12 doesn't need any water. You can assign it with
13 evaporative cooling --

14 HEARING OFFICER GEFTER: All right, --

15 MR. POWERS: -- system optionally --

16 HEARING OFFICER GEFTER: Ask your
17 question. You don't need to testify.

18 MR. KESSLER: Okay, in response, Mr.
19 Powers, we took into account that the plant would
20 need some water supply overall. And we, for this
21 alternative of dry cooling, the air cooled
22 condensers, we felt that it was reasonable to
23 assume that a similar water system was proposed by
24 the applicant initially would be used, just scaled
25 down in terms of its capacity, to supply the

1 plant.

2 So you'd still have a turnout from the
3 California Aqueduct. You'd still have the pump
4 station. You'd still have 1.7 miles of pipeline,
5 although you could reduce it in diameter and so
6 on.

7 MR. POWERS: And I understand all of
8 that. I'm just saying that none of this \$4.4
9 million is necessarily related to this specific
10 comparison of a wet cooling system to a dry
11 cooling system. This is a plantwide cost, that's
12 my point.

13 MR. MEDIATI: It only makes sense to
14 include the pipeline cost on there because we are
15 considering the pipeline cost when we're
16 considering the wet cooling system.

17 So if we take pipeline out of dry
18 cooling then we also have to take that cost of the
19 wet cooling analysis, as well. You can't --

20 MR. POWERS: But if you --

21 MR. KESSLER: Well, when we look at
22 water supply and cooling costs, we look at all
23 plant water uses. We don't single out just the
24 cooling aspects.

25 MR. POWERS: But my point is if you were

1 to take out the amount of water that you're
2 supplying with the dry cool system, which is maybe
3 5 percent of your total flow. If you drop 5
4 percent off your 23 million for the main pipe on a
5 wet cool system, you've hardly changed the cost at
6 all. It's the same. But it removes \$4.4 million
7 off of your capital cost assessment to the dry
8 cooling system. That is significant. That's my
9 point.

10 MR. KESSLER: I'm not sure I followed
11 you just there.

12 MR. POWERS: Well, --

13 HEARING OFFICER GEFTER: Okay, wait, Mr.
14 Powers. Apparently staff witness doesn't agree
15 with you or doesn't understand your question. And
16 I think you've already iterated it several times.
17 So, let's move on.

18 MR. POWERS: Could I please just make
19 one final comment --

20 HEARING OFFICER GEFTER: You can --

21 MR. POWERS: -- since this has come up
22 in several evidentiary hearings? That if you tag
23 a cost of 4.4 million onto the air cooled
24 condenser for the water, if you subtract that
25 little bit of flow from your main pipe in wet

1 system, it won't affect your number here in column
2 2. It's still going to be 22- or 23-million.

3 But if you do it on a unit, on a cooling
4 system need only, you drop out \$4.4 million of
5 cost. I won't belabor it more, but this comes up
6 many times. Doing it this way is an automatic
7 negative to a dry cooling system when the water
8 that you're talking about has nothing to do with
9 the dry cooling system.

10 MR. KESSLER: And the difference is that
11 staff has --

12 MR. GALATI: And, again, I must object
13 that this is done in this scenario. Mr. Powers
14 can testify, and then be subject to cross-
15 examination. I want to limit him to ask questions
16 of staff, which I think the Committee has ordered.

17 HEARING OFFICER GEFTER: Yes, and your
18 objection is noted, and sustained. So, Mr.
19 Powers, you can bring that up during your public
20 comment or --

21 MR. POWERS: Okay.

22 HEARING OFFICER GEFTER: -- during other
23 testimony, but let's move on and keep your
24 questions concise and specific without arguing
25 with the witness.

1 MR. KESSLER: Ms. Gefter, if I could
2 just clarify that whole discussion, --

3 HEARING OFFICER GEFTER: Yes.

4 MR. KESSLER: -- I believe that Mr.
5 Powers is taking the perspective of what is
6 cooling costs only, and we have taken a broader
7 view of water supply and cooling for the entire
8 plant needs. And those are just difference in
9 professional viewpoints as to how maybe this
10 should be approached. But that is a perspective
11 that staff has applied in this case.

12 HEARING OFFICER GEFTER: Thank you.

13 MR. POWERS: Understood.

14 HEARING OFFICER GEFTER: Okay.

15 MR. POWERS: Next line is the 15 million
16 wet cooling tower cost, 15.2 million. And I think
17 staff accepted that in the FSA and is continuing
18 to use that cost here.

19 And the question is, again, what is your
20 basis for -- is this an equipment cost? is this an
21 installed cost? What is the technical basis for
22 this number?

23 MR. KESSLER: We derived this cost from
24 I believe it's table 3.10-5 of the AFC. I'm
25 pulling that off the top of my head, but this

1 number, to the best of our understanding, is a
2 capital cost of labor, materials installed cost of
3 the wet cooling tower.

4 And it's based on numbers provided by
5 the applicant which we feel are within the range
6 of consistence of what we have seen and
7 experienced for other power plants.

8 MR. POWERS: Was my testimony that was
9 submitted considered at all in assessing the
10 estimated cost of the tower?

11 MR. KESSLER: I reviewed your testimony,
12 but we did not agree with it.

13 MR. POWERS: Okay. Next question. Next
14 question relates to the cost of reclaimed water
15 that's assigned for these cost calculations. This
16 is about two-thirds of the way down the page.

17 And the line is: equivalent annual
18 recycled water costs for 30 years. And it's
19 giving a cost of \$100,000 as the cost. And that
20 the pricing is shown above. Some of the pricing
21 was difficult for me to quite understand where
22 this dollar figure came from, but it works out to
23 extraordinarily low cost for recycled water.

24 So my question is who is picking up the
25 cost for producing the reclaimed water if Tesla's

1 not paying essentially anything for it? Who is
2 paying for the production of that reclaimed water?

3 MR. KESSLER: Well, first off, these
4 prices are ones that we received from the City of
5 Tracy; and I believe are consistent with the
6 latest draft agreement that the City and the
7 applicant are developing.

8 As to who is bearing their costs or what
9 incentives the City has to make this water
10 available at potentially no cost for the first,
11 say, 15 years of the project, and then to begin
12 charging a price, your answer could probably best
13 come from Mr. Bayley who is in the audience.

14 But I do understand from discussions
15 with him that there are some incentives that make
16 that what the City believes to be a productive
17 decision; that the City Council has already
18 embraced. And some of those have to do with
19 getting a recycled water program off the dime, and
20 establishing that for the City so that it, down
21 the road, cannot only potentially supply this
22 power plant, but can be available for other users
23 in the City.

24 There's a number of things that costs
25 that are avoided in terms of without having to

1 discharge that water to the Delta, or be subject
2 to more stringent discharge requirements to the
3 Delta down the road, or additional treatment
4 beyond the currently envisioned tertiary treatment
5 for the City's wastewater plant, they are avoiding
6 those potential costs and risks by being able to
7 avoid that discharge for this increment of water.
8 And be able to eventually sell it and provide it
9 for the power plant use.

10 Those are the kinds of things that I
11 think Mr. Bayley could expand upon and help you
12 understand the rationale as to why the pricing is,
13 under this current concept, the way it is.

14 MR. POWERS: Should I redirect the
15 question to the City of Tracy?

16 MR. GALATI: I would object to that for
17 this purpose, if I may. The purpose of the
18 Committee is to determine what is the cost to the
19 project for purposes of evaluating these
20 alternatives. Staff has provided that.
21 Identifying what the cost to the City of Tracy is
22 irrelevant to that discussion. While it might be
23 of interest, it is irrelevant to determining what
24 is the lowest cost or which is economical to the
25 project.

1 HEARING OFFICER GEFTER: Your objection
2 is sustained. Mr. Bayley will be testifying later
3 about the status of negotiations between the City
4 and the applicant, and --

5 MR. POWERS: He will be available at
6 that time?

7 HEARING OFFICER GEFTER: Yes. But, if
8 his testimony doesn't cover your question, then,
9 you know, it's foreclosed. Okay.

10 MR. POWERS: Down below, fifth line from
11 above you've got present value of lost power. And
12 you include an \$83 million present value figure
13 for that, for this option.

14 Are you, in these calculations, are you
15 assuming that there is a fuel efficiency penalty,
16 meaning that there is a heat rate penalty? And on
17 top of that there is also a power loss. It was
18 difficult for me to determine if you were just
19 assuming there's an efficiency penalty; I mean you
20 need more fuel but you're going to put the power
21 out. Or you're not only getting hit with an
22 efficiency penalty, you're also getting hit with a
23 megawatt loss.

24 MR. KESSLER: Yeah, that's a good
25 question. This is another case where the approach

1 we chose to take, Mr. Powers, is to look at what
2 the lost generation would be in using the same
3 amount of fuel. Whereas, the other way to deal
4 with it is you have provided your testimony, is to
5 say what would be the additional fuel costs to try
6 to generate the same amount of power and avoid
7 that lost generation.

8 Our analysis looks at using the same
9 amount of fuel in calculating the lost generation.

10 MR. POWERS: Do you know if that is
11 typical of operational facilities like Sutter, to
12 limit their fuel and accept power loss versus
13 putting in more fuel and maintaining their power
14 output?

15 MR. KESSLER: I have no understanding of
16 Sutter specifically.

17 MR. POWERS: So in these calculations,
18 then, you assumed constant fuel, and that that
19 lack of fuel input results in a reduction of
20 megawatt power output?

21 MR. KESSLER: Yes. And I would just
22 note that, you know, your estimate for additional
23 fuel costs were on the order of 2.5 million a
24 year; and for our low estimate on lost generation
25 we're estimating about 3.1 million a year. So

1 really we're talking about numbers that are on the
2 same order of magnitude, and I don't know what
3 really the beef is here.

4 MR. POWERS: And I note that the numbers
5 are fairly similar there. My concern is that
6 readers would look at this as a loss of power on
7 hot days, when it's not. That's how it reads.

8 HEARING OFFICER GEFTER: Okay, Mr.
9 Powers. Not testimony.

10 MR. POWERS: Okay.

11 HEARING OFFICER GEFTER: Just ask a
12 question. If you have no further questions we can
13 move on.

14 MR. POWERS: Did staff communicate
15 with -- we had two operational plants, Sutter and
16 Crockett -- to ask them, based on their designs,
17 since you have a design 40 degree initial
18 temperature difference is your design, which is a
19 good conservative design, similar to what those
20 facilities are using, did you question them about
21 if they'd actually lost -- if the air cooled
22 condenser had ever limited their power output
23 during the course of their years of operation?

24 MR. KESSLER: Not to my knowledge. I
25 know that I haven't personally, and I don't

1 believe another associate that helped us on this
2 team, Jim Schoonmaker, to the best of my
3 understanding, he did not, either.

4 MR. POWERS: Thank you. An additional
5 question on the table, this is page 22 where it
6 says power plant dry cooling efficiency loss. And
7 I think you may have answered the question already
8 in that you assumed constant fuel; and that you'd
9 actually get power loss as your end result.

10 And so is it stated explicitly anywhere
11 in here that that's the assumption, that you're
12 assuming constant fuel, and that the net result
13 obviously is a loss of power as opposed to
14 maintaining constant output, and that you use more
15 fuel? Does it say that in the --

16 MR. KESSLER: I don't know that it's
17 spelled out that clearly, Mr. Powers, but that was
18 our intention.

19 MR. POWERS: Okay. And I think that
20 this is, now that we've talked about this this is
21 pretty clear now, but it's not clear in this
22 writeup that's on page 24, first full paragraph.

23 It says: Based on the above comparison
24 of dry cooling efficiency loss, which relates --
25 equates to a reduction in capacity and energy," I

1 think that's where it gets confusing. And what
2 prompted my question, are we assuming both
3 efficiency penalty and in addition to that an
4 energy loss. And I think probably you've answered
5 that question. But it probably definitely needs
6 to be clarified so that people don't assume that
7 we're getting hit with too different types of
8 losses that are really just a reflection of same
9 thing, something one way or another way.

10 MR. KESSLER: Yes.

11 MR. POWERS: Okay. No further
12 questions.

13 HEARING OFFICER GEFTER: Thank you.
14 Staff, were you going to ask Mr. Bayley to
15 testify, particularly about the status of
16 negotiations between the City and the applicant?

17 MR. KRAMER: We've summarized the
18 letters and included the letters the City wrote us
19 recently as exhibits. We are willing to sponsor
20 him for questions from any other parties and the
21 Committee. Would you come forward, Mr. Bayley?

22 Not being at the other hearings I'm not
23 sure if he's been previously sworn.

24 MR. BAYLEY: Steve Bayley, City of
25 Tracy.

1 HEARING OFFICER GEFTER: Yes, Mr. Bayley
2 was previously sworn at the other hearing. And,
3 Mr. Bayley, before you begin, Mr. Boyd has a
4 question of the water witnesses.

5 MR. BOYD: I just have three quick
6 questions.

7 HEARING OFFICER GEFTER: Okay. Speak
8 into the microphone, please.

9 CROSS-EXAMINATION

10 BY MR. BOYD:

11 Q Okay, kind of confused, the first thing
12 is this -- find it here -- the \$100,000 price tag;
13 I had a question about that .

14 HEARING OFFICER GEFTER: Okay, this is
15 table 5A, page 21 of exhibit 128?

16 MR. BOYD: Right there, okay.

17 Under equivalent annual recycled water
18 cost for two years, where it says \$101,755, is
19 that the typical cost for recycled water? Or is
20 that -- would you call it a low cost price for
21 recycled water?

22 I don't quite understand why it's such a
23 small amount considering the amount of water that
24 they will be using. So, is that a typical cost
25 for recycled water? For like other projects that

1 have been approved by the Commission?

2 MR. MEDIATI: That number was generated
3 provided on what information we got from the City
4 of Tracy --

5 MR. BOYD: Oh, I understand that. I'm
6 just saying is that typical?

7 MR. MEDIATI: Oh, is that typical?

8 MR. BOYD: Or is that a low-ball figure,
9 as we call it?

10 MR. KESSLER: Well, it's based on the
11 best information available, and those are, I
12 believe, consistent with the numbers in the
13 agreement. But --

14 MR. BOYD: Is it consistent with what
15 other agencies are charging for reclaimed water?

16 MR. KESSLER: We've seen --

17 MR. BOYD: For other power plants in the
18 state.

19 MR. KESSLER: We've seen a really wide
20 range of costs of reclaimed water, some more, some
21 less. But just so you don't -- you understand
22 this and don't take this in a misunderstanding
23 way, for example, what this assumes, Mr. Boyd, is
24 that during the first 15 years there will be no
25 cost of water.

1 And our calculation takes into account
2 the time value of money. And then beginning in
3 year 16 through years -- up through year 30 the
4 cost of that water can either be \$50 an acrefoot
5 or \$75 an acrefoot. But 5100 acrefeet times \$50
6 an acrefoot would be about a quarter million
7 dollars, if my math is correct --

8 MR. BOYD: Oh, I see.

9 MR. KESSLER: -- in water purchase costs
10 beginning in year 16. And if that was \$75 an
11 acrefoot it would be on the order of \$375,000 per
12 year.

13 But because that's a cost that doesn't
14 begin until year 16 through 30, and you bring it
15 back to a present value for an average annual cost
16 over a 30-year period, because it was zero for the
17 first 15 years, that's how this never equates to
18 \$67- to \$101-thousand per year, when you take into
19 account that time value money.

20 So, in practical terms in current dollar
21 sense, the applicant is looking at basically no
22 cost for the water, itself, is our understanding,
23 until beginning year 16, which they could pay on
24 the order of 250 to 375.

25 When you take into account the overall

1 analysis, as we've done, it breaks it down in a
2 way, in a sense kind of an average to these
3 accounting for time value money.

4 HEARING OFFICER GEFTER: How many more
5 questions do you have?

6 MR. BOYD: Just a couple.

7 HEARING OFFICER GEFTER: Off the record
8 one minute.

9 (Off the record.)

10 BY MR. BOYD:

11 Q Is it your understanding that the
12 residents of the City of Tracy pay for, you know,
13 wastewater through their sewer service fee?

14 MR. KESSLER: I don't tend to be an
15 expert as to what the rate --

16 MR. BOYD: I'm just asking if --

17 MR. KESSLER: -- as to what the rate
18 structure is for the City of Tracy.

19 MR. BOYD: No, I'm just asking, --

20 HEARING OFFICER GEFTER: Well, if you
21 don't know the answer just answer you don't know.

22 MR. KESSLER: I don't know.

23 MR. BOYD: Okay. The reason that I'm
24 asking is at the last --

25 HEARING OFFICER GEFTER: You don't need

1 to give a reason. Just ask a question.

2 MR. BOYD: Certainly. So, you don't
3 know what, if any, cost the residents of Tracy
4 will have for the cost of the production of this
5 wastewater for the project?

6 MR. KESSLER: No.

7 MR. BOYD: Okay, then my last two
8 questions are real simple. First is in your
9 professional opinion is dry cooling feasible for
10 this project?

11 MR. KESSLER: Yes.

12 MR. BOYD: Okay. Then on page 25 of --
13 excuse me, page 27 on your summary, --

14 HEARING OFFICER GEFTER: This is exhibit
15 128.

16 MR. BOYD: It says another way to
17 consider finding (inaudible) dry cooling at -- is
18 the average annual generation would be reduced by
19 21.5 percent, while out-of-pocket costs over the
20 life of the project would be about the same as for
21 what -- based on that, that statement, is it your
22 opinion that dry cooling is cost effective for
23 this project?

24 MR. KESSLER: I missed a word you said,
25 that dry cooling is what?

1 MR. BOYD: Cost effective.

2 MR. KESSLER: Cost effective.

3 MR. BOYD: For this project.

4 MR. KESSLER: I believe it's in the
5 range of what's cost effective, but I don't
6 believe it's the most cost effective option for
7 this power plant.

8 MR. BOYD: Thank you, that's all I have.

9 HEARING OFFICER GEFTER: Thank you. Any
10 redirect of your witnesses?

11 MR. KRAMER: No.

12 HEARING OFFICER GEFTER: Mr. Bayley, now
13 we're ready for you. And perhaps you can sit in
14 one of those seats over there at the table;
15 someone can switch.

16 And indeed Mr. Bayley did testify at the
17 previous hearing, so you're still under oath.
18 Whereupon,

19 STEVEN G. BAYLEY
20 was recalled as a witness herein, and having been
21 previously duly sworn, was examined and testified
22 further as follows:

23 MR. KRAMER: I'll just ask Mr. Bayley a
24 couple questions I think may help answer some of
25 the implied questions we just heard.

1 DIRECT EXAMINATION

2 BY MR. KRAMER:

3 Q Mr. Bayley, if this power plant takes
4 recycled water from the City or does not, is that
5 going to change the amount of recycled water the
6 City will produce?

7 A No, it will not.

8 Q So it's going to be there whether or not
9 it's used by any power plant or any other
10 project?

11 A Yes, it will.

12 Q And where does it go if the power plant
13 or some other user doesn't use the water?

14 A It will be discharged to Old River.

15 Q And does that have any complications for
16 the City, discharging into that river?

17 A There are stringent discharge
18 requirements.

19 Q So is it more desirable for the City to
20 send it to an industrial user if it can?

21 A The City has policies that encourage the
22 use of recycled water for industrial purposes.

23 MR. KRAMER: Thank you.

24 HEARING OFFICER GEFTER: Does applicant
25 have any questions of the witness?

1 MR. GALATI: No questions. Oh, actually
2 I do have one question.

3 CROSS-EXAMINATION

4 BY MR. GALATI:

5 Q Mr. Bayley, are you familiar with what
6 has been marked as exhibit 128A? For the record,
7 this is staff's proposed changes to the conditions
8 of certification requiring the use of reclaimed
9 water.

10 A Yes, I am familiar with the document.

11 Q Does the City of Tracy support the
12 inclusion of these conditions for the project?

13 A The City of Tracy supports the inclusion
14 of these document changes. We appreciate the
15 changing back to fresh water. We think that is a
16 good change. The document does make reference to
17 backup water supply. The City of Tracy is willing
18 to provide an interim supply and a reliable
19 recycled water supply. We have not committed to
20 providing a backup supply, in prior testimony.
21 So.

22 HEARING OFFICER GEFTER: Okay, and the
23 distinction between interim and backup supply?

24 MR. BAYLEY: There is a difference, yes.

25 HEARING OFFICER GEFTER: Could you

1 explain that?

2 MR. BAYLEY: Interim means with the
3 water we will supply for startup and until the
4 recycled water supply is available. Backup water
5 supply is, should the recycled water not be
6 available, then we would be committed to providing
7 another alternative supply. We've agreed to
8 provide interim and recycled, but I don't believe
9 I've testified that I've ever been willing to
10 provide a backup.

11 MR. GALATI: No further questions.

12 HEARING OFFICER GEFTER: I know that Mr.
13 Powers has some questions. And also Mr. Boyd has
14 questions.

15 CROSS-EXAMINATION

16 BY MR. POWERS:

17 Q In any of the City of Tracy's documents
18 on reclaimed water do you indicate what your base
19 cost of production is? What is it costing the
20 City of Tracy to produce the water?

21 A We do not calculate that.

22 Q How do you eventually pay for it if you
23 don't calculate how much it's going to cost you to
24 produce it?

25 A We treat wastewater; we have a budget

1 for treating wastewater. We discharge it to the
2 river. We have never established a cost for
3 recycled water.

4 MR. GALATI: Again, I would object to
5 this line of questioning. It's not relevant to
6 the Tesla proceeding. If Mr. Powers wants to
7 intervene in a proceeding in the City of Tracy on
8 how they charge rates, that would be an
9 appropriate way. Here we're determining what is
10 the cost to the Tesla Power Plant from the
11 different options. And it's unrelated to what Mr.
12 Bayley may or may not spend.

13 HEARING OFFICER GEFTER: Objection is
14 sustained.

15 MR. POWERS: I'd just like to say that
16 Tracy is estimating a cost that they're applying
17 to Tesla.

18 MR. GALATI: Again, I would object that
19 that mischaracterizes his testimony. That's a
20 price, that's a price that Tesla is charged; not a
21 cost that Tracy incurred.

22 BY MR. POWERS:

23 Q So that remains unknown, what your cost
24 of production will be?

25 MR. KRAMER: Objection. Again, we are

1 still interchanging cost and price. It's not the
2 purpose of this proceeding to decide if the City's
3 making money or losing money on their recycled
4 water.

5 MR. POWERS: But one --

6 HEARING OFFICER GEFTER: Okay, okay --

7 MR. POWERS: -- one comment. We could
8 say that the air cooled condenser --

9 HEARING OFFICER GEFTER: Off the record.

10 (Off the record.)

11 HEARING OFFICER GEFTER: Okay, after
12 discussion off the record Mr. Powers has no
13 further questions of the witnesses. Mr. Boyd has
14 some questions.

15 CROSS-EXAMINATION

16 BY MR. BOYD:

17 Q My question is relating to I guess the
18 status of negotiations that are going on now. I'm
19 curious to know what position the City's taking in
20 these negotiations regards what you guys are
21 asking for for your total annual administrative
22 costs and per acrefoot cost for the water that --
23 I mean I'm -- there's nothing set in concrete yet.
24 What position is the City taking? Is it taking
25 the same position that there's going to be no cost

1 for the water per acrefoot, but then there's going
2 to be some other administrative costs that are
3 being included?

4 A Negotiations are underway and they're
5 privileged. We're not willing to discuss those
6 here.

7 Q Okay, now what's your prognosis on how
8 soon you'll be able to come an executable
9 agreement with the applicant?

10 A Hopefully within a few months.

11 Q Do you anticipate that will take place
12 before or after the project is certified by the
13 Commission?

14 A I do not know.

15 Q So what guarantees are that any
16 agreement will ever be made to provide reclaimed
17 water from the City to the project?

18 A There can be no guarantees. The
19 conditions of the CEC will require consideration
20 of other cooling options in the event an agreement
21 from the City of Tracy cannot be reached.

22 Q So, is this like a -- this \$101,000 30-
23 year cost, is this in concrete, or is this -- can
24 it go up? Is there an opportunity for this number
25 to change because of these negotiations? Or is

1 this the position you're locked into, is what I'm
2 trying to find out.

3 A The agreement has not been signed, so
4 therefore it is subject to possible change.

5 Q So, how can we even use this then as a
6 feasible alternative when you don't have anything
7 that's -- you don't have -- I haven't seen any
8 agreement --

9 HEARING OFFICER GEFTER: Okay, Mr. Boyd,
10 I think the witness has already answered the
11 question.

12 MR. BOYD: Okay.

13 BY MR. BOYD:

14 Q And my other question is regard to has
15 the -- what's the, the City Council taking this
16 up? Have they got -- what's the people of Tracy
17 feel about this? I mean the last meeting we had
18 there were a lot of people that were a little
19 upset about the fact that they felt they were
20 getting stuck with the cost of this reclaimed
21 water. Is there anything going on legislatively
22 or -- I heard there's a recall going on around
23 this reclaimed water issue of getting free water.
24 Do you have any knowledge of that? That there's
25 concern in the community about who's paying for

1 this water?

2 A There were some concerns in the
3 community. The City Council has adopted a
4 resolution, though, in support of the use of
5 recycled water for this project.

6 Q But they haven't adopted an agreement
7 yet?

8 A That is correct.

9 MR. BOYD: Okay, thank you.

10 HEARING OFFICER GEFTER: Any redirect of
11 the witness, staff?

12 MR. GALATI: Can I have --

13 HEARING OFFICER GEFTER: Does the
14 applicant have any questions?

15 MR. GALATI: -- one additional question
16 based on what was brought out?

17 RECROSS-EXAMINATION

18 BY MR. GALATI:

19 Q Mr. Bayley, do you believe that the
20 costs identified in the table for recycled water
21 are best estimate, as we sit here today?

22 A They are the best estimate as we sit
23 here today.

24 MR. GALATI: No further questions.

25 HEARING OFFICER GEFTER: Is there --

1 Mrs. Sarvey --

2 MR. BAYLEY: Susan, there is one thing
3 I'd like to add in my testimony.

4 HEARING OFFICER GEFTER: Certainly.

5 MR. BAYLEY: I'd like to confirm the
6 City of Tracy's assumption that the applicant,
7 when they use the recycled water from the project,
8 will conform with the requirements of the State
9 Water Resources Control Board and the Central
10 Valley Regional Water Quality Control Board,
11 including but not limited to, the NPDES waste
12 discharge requirements to the extent applicable in
13 the handling and use of the recycled water at the
14 Tesla Power project.

15 HEARING OFFICER GEFTER: Okay. Is this
16 included in the letter from the City?

17 MR. BAYLEY: No, it is not.

18 HEARING OFFICER GEFTER: Oh. The
19 language that you just offered into the record,
20 would you like to see that language included in
21 the conditions of certification?

22 MR. BAYLEY: Yes, I would.

23 HEARING OFFICER GEFTER: All right.
24 Well, we will look at that and perhaps you could
25 work with staff when we go off the record to

1 determine which condition it would be more
2 appropriate to include that language in, if the
3 staff -- if the applicant has no disagreement with
4 that language. Perhaps you can work it with Mr.
5 Bayley off the record a little bit, and then you
6 could come back to us and indicate how the
7 language will be inserted into the proposed
8 conditions.

9 MR. BAYLEY: Thank you.

10 HEARING OFFICER GEFTER: Can you stay a
11 little bit longer?

12 MR. BAYLEY: Yes, I can.

13 HEARING OFFICER GEFTER: Thank you very
14 much.

15 Okay, at this point I understand Mrs.
16 Sarvey has a public comment on the topic of water
17 resources.

18 MS. SARVEY: I have two different
19 comments. First I think a really important issue
20 was brought up and that is how the public is
21 perceiving the water situation in Tracy.

22 For the last few weeks there have been
23 one to six letters to the editor about water in
24 our newspaper. People are freaking. And this is
25 a brief letter that I want to read to you so you

1 understand, because this pertains to you:

2 "Pay Like We Do. The City of Tracy is
3 offering the Tesla Power Plant recycled water
4 at no cost from the wastewater treatment
5 plant. It is also offering FPL fresh water
6 at no cost if it cannot complete the upgrade
7 of the City's new wastewater treatment plant
8 in time to supply the initial operation of
9 the Tesla Power Plant."

10 For those of us Tracy residents who are
11 already paying the highest sewage rates in
12 San Joaquin County, and are facing upcoming
13 rate hikes to finance the new wastewater
14 treatment plant, this seems unacceptable."

15 People in the City's landscape maintenance
16 districts also pay a large part of their
17 assessment to provide landscape watering to
18 common areas enjoyed by all local residents.
19 Can't that recycled water be used to water
20 the common landscape in the various
21 assessment district zones? Why must the
22 citizens of Tracy who own and finance the
23 wastewater treatment plant and its operation
24 have to pay for the water when the Tesla
25 Power Plant can get the same water for free?

1 What is wrong with this picture?"

2 We can sit around and whine or we can show
3 up at 6:00 p.m. today at Tracy Community
4 Center and let the City of Tracy, the
5 California Energy Commission and the Tesla
6 Power Plant owners, FPL, know exactly what we
7 think of the proposed plan. The power plant
8 owners should have to pay for our valuable
9 water at the same rate as the citizens of
10 Tracy. Paula Giannini."

11 Now, what I want to say is, like I said,
12 for weeks there have been letters to the editor.
13 People are freaking out about the water issue.
14 And for everybody that we can discuss the water
15 costs and recycled water with the City of Tracy,
16 that we don't need to argue about it, I think
17 you're wrong. These people are very upset. You
18 do not know when they're going to sign an
19 agreement, and if it will be before they're on a
20 hot rail out of town because of the agreement
21 they're trying to cut. And where does that leave
22 you? You have to start all over again.

23 So you really need to take that into
24 consideration because this is the hottest issue
25 I've ever seen in Tracy in 15 years. It's hotter

1 than my issues about air quality. People are
2 pissed off that there's weeds in their landscaping
3 in the road medians, and that you're getting free
4 water. And that we're building the plant to give
5 it to you, and we're paying for it.

6 So you need to be aware there is a
7 groundswell of opposition out there.

8 Now, my second comment has to do with
9 what Ms. Sundberg was talking about. I am just
10 going to read my public comment form that's been
11 docketed, and then explain my comment.

12 I participated in the Thursday , 9/18/03
13 hearings for Tesla. Dennis Jang, from BAAQMD, was
14 getting ready to leave and the Hearing Officer
15 asked if there were any more questions before he
16 left. I said yes, I had more questions. And she
17 told me I could ask my questions, and after she
18 heard the questions and answers would decide if
19 they were pertinent public comment and if they
20 should be part of the record.

21 I feel this violated my first amendment
22 rights to public comment.

23 My question, have you modeled for
24 conditions of violations for compensation for
25 Tracy if we have a biological release in the plume

1 that affected my public health and safety, had
2 this been done. He said no, they only model for
3 chemical releases.

4 I said, with the Legionella issues that
5 have come to light, I didn't think that BAAQMD --
6 didn't he think BAAQMD needed to be more forward
7 thinking on the air quality issues in relation to
8 biology. Mr. Jang agreed and said BAAQMD did need
9 to be more forward thinking on this point; but at
10 this time they are not able to test or have a
11 protocol if there's a biological release in terms
12 of charging them for a violation.

13 I think this is very pertinent to what
14 we're discussing here today because if Mr. Jang is
15 the air quality agency that's overseeing the air
16 quality aspects of this power plant because it's
17 on Alameda County ground, and he has already
18 testified that they have no protocol, no standard,
19 no beginning approach to how to monitor for a
20 Legionella outbreak or any other biological
21 release, and they have no plan for how to deal
22 with that issue, we cannot use recycled water
23 because there's no way to monitor it.

24 You cannot expect CEC Staff to monitor
25 that water every day, and protect my public health

1 and safety. And San Joaquin Valley Air Pollution
2 Control District is not responsible for that
3 because BAAQMD took full responsibility for the
4 air quality issues. And they've already admitted
5 they're not doing it; they don't know how to; they
6 don't have the capability to do it.

7 So who the heck is going to test this
8 water? We've already had Legionella meetings at a
9 CEC level. So, that's ridiculous. That is
10 absolutely ridiculous.

11 So, I very strongly feel we need to go
12 with dry cooling because there is no release from
13 dry cooling that is not able to be monitored and
14 checkpoints in place to compensate the community
15 if we are put at risk. Whereas with biology it's,
16 I guess when we all drop down dead or start
17 throwing up, whatever, however you figure out that
18 you have a Legionella outbreak. And there's
19 nobody to monitor that.

20 But they can monitor dry cooling. But
21 they cannot monitor recycled water. And we do not
22 have that capability. And we, as a community,
23 have made it very clear at several of these
24 hearings that we don't want our potable water used
25 for cooling these towers in any way.

1 And when I read the public comment
2 responses that were mailed back, and I talked to
3 the people who made these comments, who will be
4 coming later today hopefully, none of us felt like
5 the answers addressed any of our questions. That
6 any of the issues that were brought up -- Ms.
7 Garamendi brought you all kinds of evidence, and
8 it said refer to land and soil in her section.
9 And nobody said what they discerned out of all the
10 legal actions over water that are going on in
11 Tracy.

12 So I don't think you can safely sit here
13 and say we got a killer deal; they're giving us
14 the water for free, you know. It's not wrong of
15 us to take free water when we can get it. The
16 deal is you don't have a signed, sealed and
17 delivered deal. Those people are in hot water
18 over this deal. And there are lawsuits all over
19 the place with this City in relation to water.

20 So if you want to not have delays and
21 you want this project to be cost effective you
22 better look at dry cooling right away.

23 Thank you.

24 HEARING OFFICER GEFTER: Mr. Bayley, I
25 have one more question. And that is regarding the

1 timeframe for the development of your tertiary
2 treatment plant, what's the timeline on that as
3 far as you know?

4 MR. BAYLEY: We have an approved
5 environmental document. The bonds will be sold
6 within the next couple of weeks. It's open April
7 28th, or scheduled to open April 28th. We believe
8 we will extend the bid date a few weeks.

9 So by June we will have our bids opened
10 and hopefully by July a contract awarded.

11 HEARING OFFICER GEFTER: And how long
12 will it take to build out your contract --

13 MR. BAYLEY: It will take approximately
14 two and a half to three and a half years to build
15 this project. The recycled water will be
16 available probably about three years from now.

17 HEARING OFFICER GEFTER: So about 2007?

18 MR. BAYLEY: That is correct.

19 HEARING OFFICER GEFTER: Okay. Mrs.
20 Sarvey just left the room. But I wanted to
21 indicate for the record in response to Mrs.
22 Sarvey's concerns about recycled water and
23 Legionella, just that Dr. Greenberg is here to
24 testify about that issue regarding public health.
25 So, if Mrs. Sarvey comes back for the public

1 health testimony, those issues will be discussed
2 at that time.

3 Any other questions for Mr. Bayley
4 before we close the topic? Okay.

5 At this point the topic of water
6 resources will be closed with the exception of
7 receiving additional amended language proposed by
8 the City in the conditions of certification. And
9 we'll ask the parties to discuss that off the
10 record and come back to us with the proposed
11 language change based on what Mr. Bayley has
12 offered to us. Thanks.

13 Okay, the next topic is going to be air
14 quality. Let's take a short break.

15 (Brief recess.)

16 HEARING OFFICER GEFTER: On the record.
17 Staff, you have some additional language now for
18 you proposed water resources conditions?

19 MR. KRAMER: Right. This was in
20 response to the City's request that Mr. Bayley
21 explained. The parties have agreed it would be
22 appropriate to add to soil and water condition 9,
23 and that's renumbered from 11 in the PMPD, at the
24 end of the condition, itself, above the
25 verification the following sentence:

1 "The applicant shall comply with
2 requirements of the State Water Resources Control
3 Board and Regional Water Quality Control Board
4 including, but not limited to, the NPDES waste
5 discharge requirements to the extent applicable to
6 the handling and use of recycled water at the
7 Tesla Power Plant."

8 MR. GALATI: That language is acceptable
9 to the applicant.

10 HEARING OFFICER GEFTER: All right. Is
11 Mr. Bayley still here? I have a question about
12 this soil and water condition 9 where it includes
13 interim and backup water supply. You indicated
14 that the City would not be providing backup water.

15 MR. BAYLEY: I don't want to say that we
16 would not provide it, but I wanted to make sure is
17 that no one assumes that we are committed to
18 provide it.

19 HEARING OFFICER GEFTER: But it is part
20 of the condition, part of the language of the
21 condition?

22 MR. BAYLEY: It has "may provide."

23 HEARING OFFICER GEFTER: Um-hum.

24 MR. BAYLEY: The word "may" is in front
25 of the word "interim" and "backup", is it not?

1 HEARING OFFICER GEFTER: Not in soil and
2 water 9.

3 MR. KRAMER: Well, --

4 MR. BAYLEY: Oh, it says "any"? Let me
5 see. The word "any" is what I was mixing up
6 with -- it says "any interim and backup water."

7 MR. GALATI: I mean if there is none,
8 then it's some interim and no backup, but --

9 MR. KRAMER: We don't intend this
10 condition to describe exactly what the deal
11 between the applicant and the City is.

12 MR. GALATI: The reason we made the
13 modifications to include interim and backup is
14 because as originally written it only included
15 recycled water. We didn't want to get two
16 agreements, one for something like an interim
17 supply and/or backup, and one for recycled water.
18 We plan on getting one user agreement that serves
19 all our needs.

20 HEARING OFFICER GEFTER: All right,
21 well, maybe we could change it instead of saying
22 "and any" say "and interim and backup water
23 supply, if any"; in other words, put it on the
24 other side so it kind of makes it so that it's not
25 incorporated in this necessary --

1 MR. GALATI: That's satisfactory to us.
2 We just didn't want to include that we only have
3 to use recycled water with no interim supply.

4 MR. KRAMER: That's fine.

5 HEARING OFFICER GEFTER: All right. Any
6 other questions of Mr. Bayley before he leaves?
7 Okay.

8 MR. BAYLEY: Thank you.

9 HEARING OFFICER GEFTER: Okay, the topic
10 on water resources is now closed, and we're going
11 to move on to air quality.

12 We'll begin with applicant.

13 MR. GALATI: Yes, Hearing Officer
14 Gefter. Mr. Stein has been previously sworn; he's
15 our witness on air quality.

16 HEARING OFFICER GEFTER: Mr. Stein, you
17 were previously sworn at earlier hearings and you
18 will testify under oath.

19 MR. STEIN: Yes.

20 Whereupon,

21 DAVID STEIN
22 was recalled as a witness herein, and having been
23 previously duly sworn, was examined and testified
24 further as follows:

25 //

1 DIRECT EXAMINATION

2 BY MR. GALATI:

3 Q Mr. Stein, are you familiar with exhibit
4 169 entitled, the supplemental testimony of David
5 Stein on air quality, dated April 1, 2004?

6 A Yes, I am.

7 Q Do you have any modifications or changes
8 to that testimony today?

9 A Yes, I do. One minor correction on item
10 number 6, in the second-to-the-last paragraph just
11 preceding the item number 7. In the fifth line of
12 that, and it's the paragraph beginning with: "It
13 is also noteworthy..." in the fifth line of that
14 paragraph the word or acronym, SJVAPCD, should be
15 stricken and replaced with BAAQMD.

16 Q With that modification do you have any
17 additional changes, Mr. Stein?

18 A No.

19 MR. GALATI: At this time -- we have
20 already submitted the testimony, and that
21 modification is in the record. I have no further
22 questions for Mr. Stein and would make him
23 available for cross-examination.

24 HEARING OFFICER GEFTER: I have a
25 question; let's get these out of the way and then

1 we'll ask staff and intervenors for their cross-
2 examination.

3 EXAMINATION

4 HEARING OFFICER GEFTER: At page 5 of
5 your testimony, -- my copy wasn't numbered, but I
6 numbered it page 5.

7 MR. GALATI: They are numbered.

8 HEARING OFFICER GEFTER: All right.

9 MR. STEIN: This is --

10 HEARING OFFICER GEFTER: Okay, it's
11 regarding the landfill ERCs and the discussion --

12 MR. STEIN: Okay.

13 HEARING OFFICER GEFTER: -- and the
14 discussion about the Crown Zellerbach ERC which
15 you have indicated that you would be using, --

16 MR. STEIN: Yes.

17 HEARING OFFICER GEFTER: -- in addition
18 to the ERCs from the landfill. The question is
19 Crown Zellerbach, are those pre 1990 offsets?

20 MR. STEIN: I do not know.

21 HEARING OFFICER GEFTER: Well, okay, I
22 believe the intervenor has made the assertion that
23 they are pre 1990 offsets. Is there a requirement
24 by BAAQMD, Bay Area, regarding pre 1990 ERCs?

25 MR. STEIN: No, not for PM10.

1 HEARING OFFICER GEFTER: A restriction?

2 MR. STEIN: I think it's for ozone
3 precursors.

4 HEARING OFFICER GEFTER: But not for
5 PM10?

6 MR. STEIN: Yes.

7 HEARING OFFICER GEFTER: Staff, do you
8 have cross-examination?

9 MR. KRAMER: Mr. Birdsall might be able
10 to help with that question. Were you previously
11 sworn?

12 MR. BIRDSALL: I believe I've been
13 previously sworn.

14 HEARING OFFICER GEFTER: Yeah, I'm not
15 asking for your testimony right now. I'm asking
16 if you have cross-examination of the applicant's
17 witness.

18 MR. KRAMER: No.

19 HEARING OFFICER GEFTER: Mr. Sarvey.

20 MR. SARVEY: Yes, I do.

21 CROSS-EXAMINATION

22 BY MR. SARVEY:

23 Q Concerning the pre 1990 ERCs, Mr. Stein,
24 doesn't the project also utilize some ozone
25 precursor pre 1990 ERCs?

1 A Yes.

2 MR. GALATI: Again, I would entertain an
3 objection at this time that we have had
4 substantial air quality evidentiary hearing.
5 Could we please limit the questioning to Mr.
6 Stein's supplemental testimony which was the
7 purpose of this evidentiary hearing. Not to re-
8 litigate air quality issues.

9 HEARING OFFICER GEFTER: Mr. Sarvey, try
10 to limit your questions to the testimony that Mr.
11 Stein filed for today's hearing.

12 MR. SARVEY: Thank you.

13 BY MR. SARVEY:

14 Q Mr. Stein, on page 6 of your testimony,
15 exhibit 168, you state that it is also noteworthy
16 that the concern regarding ammonia slip --
17 secondary particulate was raised by Mr. Sarvey
18 during the recently licensed East Altamont Energy
19 Center proceedings.

20 Did the CEC Staff also raise that issue?
21 Or was that exclusively my issue?

22 A I don't recall.

23 Q Mr. Stein, on page 16 of exhibit 172,

24 A 172?

25 Q Exhibit 172, page 16.

1 HEARING OFFICER GEFTER: There's no --

2 MR. SARVEY: Oh, I'm sorry. I got my
3 numbers wrong.

4 MR. STEIN: Would you please identify
5 that document by title? That would help.

6 HEARING OFFICER GEFTER: Yeah. There is
7 no page 16 of exhibit 172.

8 MR. SARVEY: I'm sorry, I have the wrong
9 exhibit.

10 (Pause.)

11 HEARING OFFICER GEFTER: While we're
12 waiting for Mr. Sarvey to locate his exhibits, I
13 have another question about the Crown Zellerbach
14 offset.

15 Is this, in your testimony, Mr. Stein,
16 where you're indicating that certificate number
17 831 will be included as an ERC, was that already
18 included in the list of offsets the Bay Area
19 approved in their DOC?

20 MR. STEIN: Yes.

21 HEARING OFFICER GEFTER: So in terms of
22 the conditions of certification does that
23 particular offset have to be inserted, or is it
24 already listed?

25 MR. STEIN: It's already listed.

1 HEARING OFFICER GEFTER: Okay, Mr.
2 Sarvey.

3 BY MR. SARVEY:

4 Q Okay, I'm sorry, Mr. Stein. Exhibit
5 174, page 16, please.

6 A I'm sorry, Mr. Sarvey, what is the title
7 of that?

8 Q Sensitivity to particulate matter,
9 nitrate formation precursor emissions in
10 California.

11 HEARING OFFICER GEFTER: Before you
12 question Mr. Stein on this particular document, I
13 have a question about who sponsored this study and
14 what is the authenticity, and who authenticates
15 this study. Who sponsored it; who did it; where
16 did it come from?

17 MR. GALATI: Well, I can certainly lay
18 the foundational requirements. It has already
19 been admitted.

20 HEARING OFFICER GEFTER: It has been
21 admitted, but for my edification.

22 MR. GALATI: First of all, I want to
23 make sure, I think you said -- are you talking
24 about exhibit 174, report of sensitivity to
25 particulate matter, nitrate formation?

1 MR. SARVEY: Yes, sir.

2 MR. GALATI: On the first page of that
3 it shows that this is an Atmospheric and
4 Environmental Research, Incorporated paper by Pund
5 and Signon, dated 2 April 2001.

6 HEARING OFFICER GEFTER: Mr. Stein, can
7 you tell us who sponsored it or did it just
8 appear?

9 MR. STEIN: Well, AER is one of many
10 technical contractors that are working on an
11 evaluation of the nature of the air quality
12 problem in the San Joaquin Valley.

13 This particular paper was sponsored by
14 PG&E and the Energy Commission under a PG&E
15 contract. And a fellow by the name of Steve
16 Zieman at Chevron Research Technology Corporation,
17 who has also been very actively involved in
18 understanding the nature of the San Joaquin Valley
19 airshed atmosphere chemistry was involved, I
20 believe, in a peer review capacity. And actually,
21 I think, suggested this particular research topic
22 to the writers.

23 HEARING OFFICER GEFTER: Mr. Sarvey.

24 MR. SARVEY: Okay.

25 BY MR. SARVEY:

1 Q On exhibit 174, page 16, the paper
2 states it should be noted that the (inaudible)
3 represents some domain average chemistry, but kind
4 of characterized the specific chemical regimes.

5 Have you done any sampling to determine
6 the ammonia concentrations of the project?

7 A I have not specifically done sampling,
8 but sampling has been done and there are other --
9 there's another exhibit here, Mr. Sarvey, where
10 some of those measurements have been compared with
11 a thermodynamic model to demonstrate that the San
12 Joaquin Valley airshed is ammonia rich, which was
13 the point of my testimony on this topic.

14 Q Mr. Stein, the San Joaquin Valley
15 airshed is 350 miles long and 35 miles wide. Do
16 you have any specific sampling of the project
17 area, not just the San Joaquin Valley, per se, in
18 total?

19 A Well, sampling has been done at a
20 variety of locations, Mr. Sarvey. They aren't
21 specifically addressed and summarized in this
22 paper. But sampling has been performed and
23 carried out in a variety of locations.

24 Q But none in the project area, correct?

25 A I don't honestly know where there is a

1 sampling station in Tracy. But I do know that
2 sampling has been conducted at multiple locations
3 in the Valley.

4 Q So at this point you cannot characterize
5 the locally specific chemical regime, is that
6 correct?

7 A Excuse me, can you repeat that?

8 Q So at this point you cannot characterize
9 the locally specific chemical regime in the
10 project area, is that correct?

11 A Well, I believe that the Valley, with
12 respect to ammonia, is widely regarded to --
13 believed to be a regional problem, not a localized
14 problem. And that there is abundant literature on
15 this topic which is the consensus conclusion that
16 the Valley is rich in ammonia.

17 Q Now, since 33 percent of the emissions
18 from this project will drift toward Livermore, how
19 about the Livermore area? Have you done any
20 sampling to determine if the Livermore area is
21 ammonia rich, or do you have any information on
22 that?

23 A No, I do not.

24 Q The same exhibit, 174, page 1, states
25 that the -- in fact, an increase in NOx emissions

1 may have the counter-intuitive effect of
2 increasing PM10 nitrate, do you agree with that
3 statement?

4 A Can you point me to the specific --

5 Q Page 1, it's the last sentence.

6 A Give me a moment, please, Mr. Sarvey.

7 Q Sure.

8 A That is the conclusion of this
9 researcher. Yeah, that I agree that the research
10 supports that conclusion.

11 Q So your professional opinion is that NOx
12 emissions are irrelevant to the formation of
13 PM2.5?

14 A Within the context of the particular box
15 modeling exercise that was conducted by Betty Pund
16 and Christian Signor, yes.

17 Q Well, under those circumstances can you
18 define why we would use ammonia to control NOx if
19 NOx is not effective in controlling ammonia -- I
20 mean controlling PM2.5 formation?

21 A You're relating to an entirely different
22 processes. One is the broad, original scale
23 atmospheric chemistry, which is the topic of this
24 paper. The second is the controlled environment
25 of a combustion gas screen that is being exposed

1 to a catalyst that's specifically designed to take
2 ammonia as a reagent and promote the reduction of
3 NOx to nitrogen and water vapor.

4 The two have no correlation.

5 Q It also says that the -- on page 1, the
6 concentration of particulate matter nitrate was
7 found to be sensitive to reductions in VOC
8 emissions. Do you agree that a reduction in VOC
9 emissions would be beneficial in reducing PM2.5?

10 A I believe that this research
11 demonstrates that very real possibility, yes.

12 Q Okay. And if that's the case and you
13 believe that under AQ-7 should we also not be
14 requiring VOC reductions and emission reductions
15 in the PM2.5 season which is from November to
16 February?

17 A No. Again, this is research that is
18 dealing with a generalized box model
19 representation of the Valley; and looking at the
20 efficacy of different types of control regimes for
21 broader air quality planning. So, no, I don't
22 believe that that has specific relevance. What
23 they're talking about is in terms of much larger,
24 regional scale reductions of pollutants for
25 achieving attainment of the standards.

1 Q So then we can go back to the first
2 question then, this paper here is not too relevant
3 considering we don't know the locally specific
4 regimes and we're not applying it to this project,
5 is that correct?

6 A I think that the paper is relevant in
7 the context of trying to understand whether or not
8 ammonia emissions from the project might possibly
9 contribute to secondary PM10 in a significant way.
10 I think the paper helps to shed light on that in
11 the conclusion paper, which is that the San
12 Joaquin Valley is ammonia rich. There's other
13 paper that I've included, which reaches a similar
14 conclusion based on an evaluation of the large
15 body of regional air quality data.

16 And because the Valley is ammonia rich,
17 an attempt to try to control ammonia from a small
18 source that is a minuscule fraction of the overall
19 regional emission inventory for ammonia would not
20 produce any perceptible effect.

21 Q I'd like to ask you a question about
22 exhibit 172, please.

23 MR. GALATI: Is this one entitled the
24 year 2000 ammonia emission inventory?

25 MR. SARVEY: That's correct.

1 MR. STEIN: Okay.

2 BY MR. SARVEY:

3 Q Okay, on the second-to-the-bottom of the
4 last line where it says, power plant approximated
5 emissions of ammonia, tons per year, it says 203
6 tons a year in San Joaquin Valley. Does that seem
7 like an accurate figure to you?

8 A I think it probably was for the year
9 2000, yes.

10 Q Now the applicant is proposing to limit
11 emissions when they cannot provide the necessary
12 emission reduction staff's AQ-7. Can you describe
13 to me, or to the Committee how you will apply
14 that? Particularly in the ozone season.

15 A I don't believe that I'm qualified to
16 provide a response to that. I'm not a power plant
17 operator.

18 Q Okay, well, let's put it a different
19 way, then. The new plant is to restrict emissions
20 over a six-month averaging period, is that
21 correct, to avoid impacts to air quality?

22 A Yes.

23 Q Now in the ozone season from April to
24 September you may not run in April and May due to
25 load management which allows you to run 100

1 percent in June, July and August are worst ozone
2 months and our highest electrical demand months.

3 Can you explain how limiting the output over a
4 six-month period prevents violations of the ozone
5 standard in June, July and August?

6 A I'm sorry, could you repeat your
7 question?

8 Q Sure. In the ozone season from April to
9 September you may not run in April to May due to
10 low demand, which allows you to run 100 percent in
11 June, July and August, or worst ozone months and
12 our highest electrical demand months. Can you
13 explain how limiting output over a six-month
14 period prevents violations of the ozone standard
15 in June, July and August under these
16 circumstances?

17 A I think it's a hypothetical question
18 that has no basis in fact. I'm not going to
19 speculate on how the power plant would run. I
20 think that, you know, every power plant is
21 designed with some engineering margins. So I
22 think there is every expectation that the plant
23 will be able to comply and more than comply with
24 its emission limits. And that it will achieve
25 emissions that are near or at these emissions

1 targets.

2 Q The limitation on the six-month
3 averaging period, would that be a limitation that
4 could be applied on a daily basis, or it will be
5 on a monthly basis, or it will be on a six-month
6 basis?

7 MR. GALATI: Object to get some
8 clarification. What six-month averaging time are
9 you talking about --

10 MR. SARVEY: I'm speaking of the six
11 months, in your PMPD comments you stated that you
12 opposed the Committee restricting the six-month
13 operating --

14 HEARING OFFICER GEFTER: Are you
15 referring to Mr. Stein's testimony? Or to
16 applicant's comments?

17 MR. SARVEY: That's actually applicant's
18 comments --

19 HEARING OFFICER GEFTER: Where are you
20 referring --

21 MR. SARVEY: -- applicant's comments and
22 applicant's proposal to limit operation of the
23 plant during certain months when they haven't
24 achieved the -- and this is in applicant's
25 proposal. I'm assuming Mr. Stein --

1 HEARING OFFICER GEFTER: Okay, --

2 MR. SARVEY: -- is the one who developed
3 it; maybe I'm wrong, but --

4 HEARING OFFICER GEFTER: -- and this is
5 contained in the applicant's comments?

6 MR. SARVEY: Yes.

7 HEARING OFFICER GEFTER: It's separate
8 from Mr. Stein's testimony?

9 MR. SARVEY: Well, it's in their earlier
10 proposal; it's contained in staff's condition.
11 The applicant proposed that if they couldn't
12 achieve all the emission reductions under AQ-7
13 plan, then they would reduce operating hours to
14 make up for that. I'm trying to figure out how
15 exactly that prevents violations at the times when
16 we need that plant, not to be operating the most,
17 if they don't have those emission reductions in
18 place. That's the question --

19 MR. GALATI: Mr. Sarvey, are you looking
20 at page 163 and 164 of the PMPD, the actual AQ-7?
21 Is that what Mr. Stein should be referring to?

22 MR. SARVEY: Yes.

23 MR. GALATI: Okay. Then I withdraw my
24 objection. Go ahead and ask the questions. I
25 didn't know what you were talking about.

1 MR. STEIN: Okay, I have AQC-7 in front
2 of me. And your question, Mr. Sarvey, again is?

3 BY MR. SARVEY:

4 Q My question is there's going to be a
5 limitation if you don't achieve the emission
6 reductions under AQ-7 to operate in your plant.
7 Now, how will those restrictions on the plant be
8 administered? Will they be administered on a
9 daily basis you'll cut back production per average
10 per day, or will it be on a weekly basis, or a
11 six-month basis? That's my question.

12 A Well, again, I'd say that, you know,
13 it's not going to be my responsibility to operate
14 this power plant. The applicant might be in a
15 better position to respond to how they intend to
16 operate. But, I think the limits speak for
17 themselves, and beyond that I would say that there
18 is a strong belief that the combination of
19 engineering margin that will be built into the
20 design and the ability to dispatch will allow the
21 facility to meet these emission limits quite
22 handily.

23 Q On your table 16 revised --

24 A Or, excuse me, let me add -- I should
25 add, or provide supplemental emission reductions

1 in the event that additional operation is deemed
2 to be necessary.

3 Q Exhibit 169, table 16 revised.

4 A Is that my testimony, Mr. Sarvey?

5 Q Yes, it is. You don't have page numbers
6 on my copy so I can't tell you what page it's on.

7 A Okay, table 16 revised, yeah.

8 Q You've revised the PM2.5 24-hour impact
9 to 5.1 mcg/cubic meter, is that correct?

10 A I think what we did there is simply pick
11 up the staff's estimated impact value since the
12 Committee had issued a PMPD and had concluded that
13 those were the values that should be used.

14 And with a specific note that we didn't
15 do any additional analysis or detailed modeling of
16 PM10. So, for purposes of responding to the
17 Committee's request, we simply overstated the
18 impact by saying that all of -- let's assume the
19 worst case that all of the PM10 -- PM2.5, these
20 are the values that we show; these are the impacts
21 would be shown. We don't believe that it's all
22 PM2.5, but we did not perform a separate
23 calculation to determine what the true number
24 should be.

25 Q So, --

1 A This is a high over-estimate.

2 Q So on the same table of PM10 you'd have
3 a project impact of 5.1 mcg/cubic meter, do you
4 feel that that's an appropriate figure?

5 A Again, I've testified previously as to
6 what we separately believe those impacts to be.
7 What we're doing here is picking up the
8 information that was presented by the Committee in
9 the PMPD and providing a specific update. I think
10 I previously testified that we had separately
11 modeled and shown the impacts to be slightly lower
12 than that. But, you know, for purposes of
13 responding to the Committee's request, we simply
14 updated the table that was provided in the PMPD.

15 Q Okay, thank you, Mr. Stein.

16 MR. SARVEY: That's all.

17 HEARING OFFICER GEFTER: That's all. Do
18 you have any redirect of your witness?

19 EXAMINATION

20 PRESIDING MEMBER GEESMAN: Mr. Stein,
21 your exhibit 172, I had a couple of questions on
22 this table that's titled year 2000 ammonia
23 emission inventory.

24 MR. STEIN: Yes.

25 PRESIDING MEMBER GEESMAN: And these are

1 fairly trivial questions. Could you explain to me
2 what native animals are there?

3 MR. STEIN: That's the bugs and bunnies
4 that are out there, the natural like the kit fox.

5 PRESIDING MEMBER GEESMAN: Okay. And
6 also do you know what might be included under the
7 category here domestic? What would account for
8 domestic emissions of ammonia?

9 MR. STEIN: I don't know off the top of
10 my head what that would be. But, you know,
11 sewage, emissions from sewers might be --

12 PRESIDING MEMBER GEESMAN: Okay. Thank
13 you.

14 HEARING OFFICER GEFTER: Regarding the
15 cumulative impact analysis that was submitted in
16 the initial AFC, does your impact analysis include
17 foreseeable mobile sources due to the housing
18 developments in the nearby communities?

19 MR. STEIN: In one of the analyses that
20 we did, we did include mobile sources -- did we
21 include -- We included areawide sources, which may
22 not have included mobile sources. I think the
23 difficulty with including really any of these
24 sources in a model is that the nature of the
25 source that they are highly variable emitters. It

1 is almost impossible to characterize the terms of
2 their movements, whether they're inside the area
3 and outside the area.

4 None of that kind of information is
5 carried into the EIR that reports them. We're
6 simply left with this bulk number of so many
7 additional vehicles or vehicle miles traveled
8 produces so many emissions. And it would just be
9 highly speculative to try to stuff that kind of
10 information into the dispersion models that are
11 routinely used for evaluating stationary sources.
12 So we don't do it. It would just be garbage in/
13 garbage out.

14 HEARING OFFICER GEFTER: All right, now
15 in terms of the landfill again, the landfill ERCs.
16 Assuming that all of the PM10 emissions are PM2.5,
17 which is what I understand you testified to, using
18 the more conservative analysis?

19 MR. STEIN: No, let me be sure I'm clear
20 on that. What I thought I said was that we didn't
21 separately calculate the portion that would be
22 PM2.5. In order to be responsive, we made a very
23 conservative over-estimate, worst case that it's
24 all PM2.5. We believe it's less than that.

25 HEARING OFFICER GEFTER: Right, that's

1 what I was --

2 MR. STEIN: And -- okay, and your
3 question was specifically for the landfill
4 emissions. We believe that the PM2.5 component of
5 the landfill emissions are substantially under-
6 estimated by staff.

7 And we had looked at some site specific
8 content analysis that suggested the PM2.5 fraction
9 was substantially greater. So the staff's
10 correction of 15 percent is quite conservative.

11 HEARING OFFICER GEFTER: And so in terms
12 of using the landfill, it's being used, but only
13 to the extent that it doesn't cover what Crown
14 Zellerbach and the other ERCs would be offsetting,
15 is that --

16 MR. STEIN: Well, in the landfill the
17 ERCs are part of the overall package. So, those
18 ERCs were necessary in order to meet the full
19 offset liability for the project.

20 HEARING OFFICER GEFTER: It seems that,
21 at least in the most recent filings, and perhaps
22 it's in the comments from the applicant, that with
23 the Crown Zellerbach ERCs, plus the landfill, and
24 in fact your offset package exceeds those required
25 by the Bay Area Air District. Am I misreading

1 that?

2 MR. STEIN: No, I think you are mis-
3 reading that, yes. There all --

4 MR. GALATI: If I could provide some
5 clarification, early on in the project they were
6 going to be a much -- paving the same amount of
7 roads, the Bay Area Air Quality Management
8 District initially was going to give a much larger
9 PM10 number. Once that was revised to be cut in
10 half. The applicant has proposed to make up that
11 half with Crown Zellerbach.

12 The only remaining issue, as I
13 understood it, was on this CEQA residual
14 liability, how much should the landfill portion of
15 the total package be given credit for 2.5.

16 HEARING OFFICER GEFTER: All right, I
17 think I'm done with Mr. Stein. Does staff have
18 any cross-examination?

19 MR. KRAMER: No.

20 HEARING OFFICER GEFTER: No? Okay.
21 Intervenors are finished with Mr. Stein, right?
22 So we're going to move on to the staff --

23 MR. GALATI: Can I ask some redirect?

24 HEARING OFFICER GEFTER: Yes. You have
25 some redirect.

1 MR. GALATI: Okay, thank you.

2 REDIRECT EXAMINATION

3 BY MR. GALATI:

4 Q I just have a -- Mr. Stein, regarding
5 the questions that you were asked by the
6 Committee, cumulative impacts and mobile sources.

7 Do you believe the project is mitigating
8 all of its direct impacts?

9 A Yes.

10 Q Once those impacts are mitigated, do you
11 believe there is any contribution to the
12 cumulative problem?

13 A No. The project would be fully
14 mitigated and would not contribute to any
15 cumulative impacts in the area.

16 Q When you look at the modeling analysis
17 of whether it includes mobile sources or not,
18 there is a cumulative impact number for PM10, is
19 that correct?

20 A Yes.

21 Q Does that number include all the
22 mitigation being imposed by the sources considered
23 in that analysis?

24 A No. The analysis is very conservative
25 because it does not address the mitigation that's

1 provided for this project, or other power plant
2 projects that were included in the analysis. It
3 simply looks at the stack emissions and the other
4 components of the project.

5 MR. GALATI: No further questions.

6 HEARING OFFICER GEFTER: Okay. Staff.

7 MR. KRAMER: Okay, so we're ready for
8 our witness?

9 HEARING OFFICER GEFTER: Yes.

10 MR. KRAMER: Okay, that would be Mr.
11 Birdsall.

12 HEARING OFFICER GEFTER: Mr. Birdsall
13 was previously -- were you previously sworn, I
14 believe you were --

15 MR. BIRDSALL: In September.

16 HEARING OFFICER GEFTER: -- in the
17 earlier hearings. So you will testify under oath.
18 Whereupon,

19 BREWSTER BIRDSALL
20 was recalled as a witness herein, and having been
21 previously duly sworn, was examined and testified
22 further as follows:

23 DIRECT EXAMINATION

24 BY MR. KRAMER:

25 Q Mr. Birdsall, did you prepare the air

1 quality testimony portion of exhibit 128, which is
2 the March 30 comments and testimony that the staff
3 filed in this proceeding?

4 A Yes, I did.

5 Q And is that your best professional
6 judgment?

7 A Yes, it is.

8 Q Do you have any corrections to make to
9 that testimony?

10 A I don't have corrections to make to that
11 testimony, no.

12 Q Okay. I'm going to ask you a few
13 questions to deal with some of the issues that
14 have been raised already or are likely to be
15 raised after you testify.

16 First, let's talk about your cumulative
17 impact analysis for this project. Do you believe
18 it is adequate?

19 A Yes, I believe it's adequate.

20 Q Okay. One of the criticisms that you've
21 heard is that mobile sources were not included
22 from projects like Mountainhouse and other
23 projects. Is that true of your analysis, or were
24 they included?

25 A Mobile sources are included in staff's

1 cumulative assessment. As Mr. Stein has pointed
2 out, there are a number of complications with
3 explicitly quantifying mobile sources in the
4 models that staff and applicant uses.

5 So the method that staff uses is to look
6 at the past background concentrations of ambient
7 pollutants and consider that to be the future
8 worst case scenario in the future cases that
9 include the buildout of the Tesla Power Plant
10 project.

11 And the reason why that accounts for the
12 mobile source growth in the area is because the
13 mobile source sector is under control through a
14 variety of programs from the State Air Resources
15 Board, the USEPA, fuel reformulation programs, and
16 whatnot, that when all taken together help to
17 decrease the background concentrations that exist
18 today. Even in the face of growth of vehicle
19 miles traveled and the growth of numbers of
20 vehicles in the area.

21 Q So more cleaner cars and trucks equals
22 the same or less amount of total emissions?

23 A That's the premise. And so the
24 background conditions that we've assumed in our
25 model, which are from monitoring data in Stockton

1 in 1999, that, in our opinion, represents the
2 starting point and worst case of the mobile source
3 sector and its contributions.

4 And all of the mobile source sector
5 growth that occurs in the future is offset by
6 these ongoing programs to control tailpipe
7 emissions.

8 Q Okay. Did you review exhibit 111? That
9 was Mr. Ngo's email and data regarding the
10 modeling for the East Altamont project.

11 A I did. Mr. Sarvey's exhibit 111?

12 Q Yes.

13 A Yes.

14 Q And were you able to understand the
15 inputs that went into that model?

16 A I was. Mr. Sarvey submitted an
17 electronic version of modeling that CEC Staff on
18 the East Altamont case had prepared at the time,
19 which is around October of 2002.

20 Q And did the results of the East Altamont
21 modeling differ from the results you came to in
22 this case?

23 A Well, they did because they used a
24 slightly different inventory of sources in the
25 model. But, on the other hand they did not when

1 you look at which sources were included. And I
2 can elaborate on this.

3 Q Please.

4 A The differences between the cumulative
5 assessment that Mr. Sarvey provided in exhibit 111
6 and that Energy Commission Staff Tuan Ngo put
7 together on East Altamont, I believe are an over-
8 estimate of cumulative impacts.

9 The reason why I believe it's an over-
10 estimate of cumulative impacts is because Tuan,
11 when he was preparing the East Altamont
12 assessment, included mobile source emissions from
13 the Mountainhouse development with the assumption
14 that background concentrations in the future would
15 not decline.

16 And what I'm saying is that Tuan used a
17 background condition from 1999 or earlier, and did
18 not extrapolate that background condition into the
19 future when Mountainhouse is fully developed. His
20 mobile source emissions from Mountainhouse are
21 expected to occur and grow gradually from today
22 into the future.

23 And I believe that the mobile source
24 emissions from Mountainhouse that Tuan put into
25 the model are probably around the year 2020.

1 So this is a future source that's
2 emitting in the area, but what Tuan did not
3 consider is that the background would also decline
4 during that time between now and 2020.

5 So I think that Tuan's analysis is a
6 little bit conservative, and this is why it shows
7 that the East Altamont cumulative impacts are a
8 maximum of approximately 8 mcg/cubic meter on a
9 24-hour basis for PM10 versus Tesla, which has
10 been shown to be about 6.

11 Q And that's those two numbers compared to
12 what total value?

13 A Well, the 8 that Tuan found and the 6
14 that I found, I compare that to the 1999
15 background condition which is approximately 150.
16 So, I'm saying that the Tesla project, and the
17 cumulative stationary sources that are coming into
18 the area would contribute 6 to a background
19 condition of 150.

20 Q And do you agree with Mr. Stein's
21 conclusion that the direct impacts of Tesla Power
22 Plant are fully mitigated by the offsets and other
23 means?

24 A I do agree with Mr. Stein on that. And
25 we've worked long and hard on this project to

1 fully characterize the impacts and then develop a
2 very specific mitigation scheme.

3 And to back up, the results of our
4 cumulative assessment that indicated the project
5 would, in conjunction with other projects, cause a
6 6 mcg/cubic meter increase to the background
7 conditions which are 150 mcg., we consider that to
8 be a significant cumulative impact.

9 And our mitigation scheme that has been
10 hashed out through the hearings and subsequent
11 documents, and then showed up in the proposed
12 decision is all embodied in AQC-7. And AQC-7 is
13 the mitigation approach that would fully reduce
14 the project's significant cumulative impacts to a
15 less than significant level.

16 Q In other words it's fully offset?

17 A In other words the project is fully
18 mitigated with the conditions that are in the
19 proposed decision right now.

20 Q Okay. I believe Mr. Sarvey has
21 suggested that a project or two was also left out
22 of the modeling for cumulative impacts, and that
23 the result is suspect for that reason. Could you
24 respond to that criticism?

25 A I can. Mr. Sarvey's testimony addresses

1 specifically a project called Tracy Gateway, and
2 he's called out the expected sources that are
3 attributed to Tracy Gateway and tabulated them for
4 us.

5 And he is right that we did not
6 explicitly include Tracy Gateway in the cumulative
7 air quality assessment. I did include some other
8 land use developments, the Mountainhouse, for
9 example, and Tracy Hills and South Schulte, I
10 believe. My written testimony would support that.

11 The issue with Tracy Gateway is that no,
12 staff did not include it, but in the scheme of the
13 impacts that are predicted in my cumulative
14 assessment, it would not alter the results. And I
15 can explain that by showing the emissions from
16 Tracy Gateway that are shown in Mr. Sarvey's
17 testimony.

18 For PM10, for example, are less than .1
19 ton per year of various sources. And those area
20 sources are distributed over the entire Tracy
21 Gateway project area. So we have .1 tons per year
22 of emissions that are distributed over a land use
23 development of approximately 500 acres.

24 And because those area sources are so
25 widely diffused they would not change the results

1 of my cumulative assessment. And, as I said a few
2 minutes ago, the mobile sources that are
3 associated with Tracy Gateway are included in the
4 background conditions.

5 So I believe that my cumulative
6 assessment is accurate and complete.

7 Q Okay. Mr. Sarvey is suggesting that
8 it's necessary to require offsets for the
9 particulate matter that might result from the
10 conversion of ammonia in the atmosphere. Do you
11 agree that that's necessary?

12 A Could you rephrase that?

13 Q Mr. Sarvey says that the Commission
14 should require offsets for the ammonia slip
15 because some of it will convert to particulate
16 matter. Do you agree that that's necessary or
17 required?

18 A Well, it is not required. The project
19 emissions of ammonia are occurring in a context
20 where -- well, let me back up and say, the ability
21 for ammonia to create particulate matter, which is
22 the question of whether or not there is an impact
23 from the ammonia.

24 The ability for the ammonia to create
25 particulate matter depends on the availability of

1 precursor pollutants besides ammonia. The
2 ammonia, by itself, does not necessarily cause
3 particulate matter impact.

4 The availability of nitrogen oxides and
5 sulfur oxides and other reactive chemicals can
6 lead to particulate matter. I think that Mr.
7 Stein's recent testimony and some of the
8 conversation that we've already had today about
9 VOC control in the region, and nitrogen oxides
10 control in the region, and how would it alter the
11 ammonia particulate in the region, I think that
12 indicates just how complicated the problem is, and
13 how complicated the chemistry of the Valley is.

14 The reactivity of the ammonia depends on
15 things like the availability of those precursors,
16 the nitrogen oxides and sulfur oxides; and it
17 depends on the relative humidity; it depends on
18 the temperature. So it cycles throughout the day.

19 And staff does not have at its hands a
20 good yardstick to correlate the emissions of
21 ammonia into a project impact of PM10. So what
22 staff does is staff seeks to fully offset the
23 limiting reagents or the limiting reactants in
24 this equation.

25 We fully offset the nitrogen oxides and

1 the sulfur oxides by causing source reductions
2 elsewhere. And so that the project impacts of
3 nitrogen oxides and sulfur oxides are zeroed out.
4 And then we seek to minimize the ammonia
5 emissions.

6 And for this project the applicant came
7 forward with ammonia slip being proposed to be
8 limited to 5 ppm. On other cases when the
9 applicant comes to the Energy Commission and says
10 ammonia slip will be limited to 10 ppm, we fight
11 for 5. And on this case the applicant proposed 5
12 and we believe that the ammonia slip is minimized.

13 So we haven't recommended additional
14 mitigation for ammonia.

15 Q Okay. Mr. Sarvey cited a couple of
16 other cases, the Walnut case, I believe, and one
17 other whose name slips my mind. Did you review
18 the testimony he cited?

19 A I did.

20 Q Would you put it in context in those
21 cases? Was staff asking for offsets, or just that
22 the ammonia slip be reduced down to 5 ppm?

23 A In those cases staff was asking for the
24 applicant to minimize its ammonia emissions. So
25 staff was not looking for offsets, and staff has

1 not requested offsets for ammonia emissions in any
2 other case, including Walnut and I believe it was
3 Cosumnes, which is the other one referenced here.

4 So, in this way, what I am recommending
5 on Tesla is consistent with what staff has
6 recommended on these previous cases. Because on
7 those previous cases the applicant did not come to
8 the Energy Commission with ammonia already
9 minimized.

10 Q Could you briefly explain the situation
11 with the -- the current situation and your
12 understanding of it regarding the Bay Area
13 District's ability to issue a PSD permit?

14 A Sure. There is a current state of
15 disarray right now in how the Bay Area Air
16 District regulates PSD sources. The EPA has
17 withdrawn the delegation and it's my understanding
18 that the Bay Area District is trying to regain a
19 sort of temporary or a conditional delegation so
20 that they can finish up permitting sources that
21 are in the pipeline already. Sources like the
22 Tesla Power Plant.

23 So, at this point it's still unclear
24 which agency, either the USEPA or the Bay Area Air
25 District, will issue the PSD conditions. But the

1 Bay Area District has already done the PSD
2 analysis and those conditions are included in the
3 FDOC and also included in our staff assessment and
4 proposed decision.

5 We don't believe that the EPA would
6 likely issue additional conditions or conditions
7 that are any different. But if EPA should issue
8 additional conditions, we have a condition that
9 staff recommended that is included in the PMPD
10 called AQC-5. And AQC-5 would capture new
11 conditions if they are issued by the USEPA, and if
12 they are different from what is already included
13 in the decision.

14 MR. KRAMER: Let me ask. We have some
15 comments on the applicant's comments on the PMPD.
16 Would you prefer for us to discuss those now or
17 later?

18 HEARING OFFICER GEFTER: I think --

19 MR. KRAMER: Later?

20 HEARING OFFICER GEFTER: -- now, because
21 it's in context and the applicant's witness is
22 here, as well.

23 BY MR. KRAMER:

24 Q Go ahead.

25 A Okay. I've reviewed the applicant's

1 comments on the PMPD and I wanted to offer our
2 opinion so that we could provide some direction to
3 the Committee as the Committee tries to synthesize
4 everything.

5 The applicant filed some written
6 comments on AQC-7, which is the one key mitigation
7 measure, I think, for this project. We have no
8 objection to the applicant's comments. We also
9 have no objection to the Committee's proposal.

10 These are additional words that were
11 suggested by the Committee for AQC-7. And I
12 wanted to just clarify that staff really has no
13 objection to either the Committee's suggestion or
14 the applicant's recommendations that those words
15 be deleted.

16 HEARING OFFICER GEFTER: One of the
17 things that applicant seemed to be concerned about
18 was the difference between the words target and
19 limit. Do you want to -- staff used the word
20 target and that seemed to make sense.

21 MR. BIRDSALL: Well, I think that the
22 applicant's comments, now you're referring to
23 applicant's comments on page 145 of the PMPD and
24 also page 146 of the PMPD.

25 And I think that again the applicant's

1 comments are acceptable. I think on page 145, if
2 I was going to write it, myself, I don't think
3 that -- well, I think that if I were to write the
4 comments on page 145 myself, it starts out and it
5 says, staff believes that seasonal -- the
6 applicant's version says, staff believes that
7 seasonal mitigation -- sorry, seasonal limits are
8 necessary because air quality impacts blah, blah,
9 blah, are seasonal by nature.

10 The applicant recommended changing the
11 word target to limits. I would recommend changing
12 limits to mitigation. So that on page 145 of the
13 PMPD my recommendation would be, staff believes
14 seasonal mitigation is necessary because air
15 quality impacts are seasonal by nature.

16 HEARING OFFICER GEFTER: In the actual
17 condition AQC-7, in other words the word target
18 was used by staff's original draft.

19 MR. GALATI: If I could just provide a
20 clarification. That was our original draft.
21 Staff was proposing limits. We asked for targets.
22 And since you were summarizing what staff wanted,
23 we were trying to make it clear. That was the
24 purpose of those limited comments.

25 HEARING OFFICER GEFTER: Okay. So, the

1 comment, just to be clear, our major concern is
2 that AQC-7 had a prelude couple of sentences that
3 removed the concept of targets and made them pure
4 emission reductions without giving us the
5 opportunity to change our operations, which was
6 instrumental in our agreeing with staff's
7 analysis, which we had previously disagreed with.

8 HEARING OFFICER GEFTER: Right, and the
9 Committee took that out. And we can talk about
10 that in a little bit, okay, because that is
11 something that we ought to address.

12 So, unless, staff, do you have any
13 comment on that?

14 MR. BIRDSALL: Well, on that my opinion
15 is that the change that was recommended by the
16 PMPD did not necessarily -- it was not my opinion
17 that it converted those targets into strict
18 limits.

19 I believe that the condition retains its
20 flexibility. And, as Mr. Galati has pointed out,
21 the condition that staff and the applicant agreed
22 to was to preserve flexibility. And I think if
23 Mr. Galati needs that first sentence removed,
24 staff would not object.

25 I have one other minor comment, again on

1 the applicant's comments. And this is regarding
2 AQC-9, which is a new condition in the PMPD that
3 staff had not seen before it was created by the
4 Committee.

5 AQC-9 was reviewed by the applicant, and
6 the applicant provided comments to the Committee.

7 I believe that the applicant's comments are
8 valuable and I encourage the Committee to go
9 forward with them. The idea of directing the
10 funds that are given to the City of Tracy to a
11 certain program, to any one specific program, I
12 think, is not in the best interests of the City of
13 Tracy or the regional air quality mitigation
14 scheme. We need to provide flexibility to make
15 sure that that \$600,000 gets the biggest bang for
16 its buck.

17 So, I encourage the Committee to adopt
18 the applicant's recommendations on C-9.

19 HEARING OFFICER GEFTER: It also
20 reflects the City's interest in the letter they
21 sent us, which is exhibit 130, the City of Tracy
22 also asked for that to be modified to give them
23 more flexibility.

24 MR. BIRDSALL: Okay, good. I had not
25 seen that exhibit.

1 HEARING OFFICER GEFTER: Yes. Okay,
2 anything else from staff?

3 MR. BIRDSALL: That's all.

4 HEARING OFFICER GEFTER: Before we go to
5 cross-examination I have a question for staff. On
6 page 5 of exhibit 128, which is your testimony,
7 you say that -- it refers to the Crown Zellerbach
8 offset, and you were suggesting that it be
9 included in condition AQC-7. And that's why I was
10 asking those questions of Mr. Stein, because he's
11 indicated that that offset is already included in
12 the FDOC conditions. And I'm wondering what you
13 were referring to. I was confused by that.

14 It's at page 5; it's the first full
15 paragraph.

16 MR. BIRDSALL: Right. Let me make sure
17 I understand the question correctly. And I think
18 maybe, I read through this and I see that it's a
19 little bit unclear.

20 The applicant -- I agree with Mr. Stein
21 that the applicant has come forward with a Crown
22 Zellerbach emission reduction credit, and they've
23 also come forward with a proposed credit for road
24 paving. And together that makes up the bulk of
25 the PM10 mitigation scheme.

1 There has been an ongoing question of
2 whether or not the applicant would consider
3 changing that mitigation package from being a
4 combination of Crown Zellerbach and landfill
5 credits to be an all Crown Zellerbach. And that
6 was a suggestion that staff had had early on.

7 And if the applicant had pursued it,
8 which they've indicated that they are not
9 interested in pursuing, then what it would do is
10 it would trigger an additional edit to the numbers
11 in AQC-7.

12 So to kind of clarify these last two
13 sentences of my testimony on March 30th, I could
14 change the sentence, or I would change the wording
15 of the sentence that begins, If the applicant
16 chooses to use the Crown Zellerbach ERC. I would
17 change that to, If the applicant chooses to use
18 the Crown Zellerbach ERC to fully mitigate -- or
19 to substitute the landfill road paving ERC.

20 Then it would be necessary to modify
21 AQC-7. The applicant has not proposed any such
22 thing. We've written AQC-7 to incorporate the
23 applicant's current proposal. And we think that
24 no changes need to be made to AQC-7, and that the
25 issue is closed really.

1 HEARING OFFICER GEFTER: Well, but that
2 is, in fact, what is confusing. If staff thinks
3 that the Crown Zellerbach ERC could replace the
4 landfill ERC to meet the PM10 scheme, that sounds
5 to me like there's enough in the Crown Zellerbach
6 offset, unless you mean that applicant would then
7 purchase another offset.

8 MR. BIRDSALL: The applicant would have
9 to purchase additional tons.

10 HEARING OFFICER GEFTER: Okay, that --

11 MR. BIRDSALL: Thank you.

12 HEARING OFFICER GEFTER: -- that is what
13 is not clear from the testimony on both sides.

14 MR. BIRDSALL: Right.

15 HEARING OFFICER GEFTER: All right.

16 MR. BIRDSALL: But those additional tons
17 would come from the same Crown Zellerbach place.

18 HEARING OFFICER GEFTER: Okay, so to,
19 actually if applicant chooses to purchase
20 additional Crown Zellerbach ERCs or something like
21 that.

22 MR. BIRDSALL: That's perfect. Thank
23 you.

24 MR. GALATI: The only update I would add
25 is except that they're not in a significant amount

1 to take care of the remaining landfill credits.

2 There's not like another 90 tons of Crown

3 Zellerbach ERCs to obtain.

4 HEARING OFFICER GEFTER: Okay, so
5 they're not available, and there are no other ERCs
6 that would be in compliance with the requirement,
7 is that --

8 MR. GALATI: Yeah, none that we have
9 identified, as well as --

10 HEARING OFFICER GEFTER: All right.
11 Okay, that seems to be what was confusing from the
12 testimony. Because it wasn't clear that it meant
13 that you'd have to purchase additional ERCs.

14 All right. That clears that up. All
15 right.

16 And then --

17 MR. GALATI: I mean to the extent that
18 we found ERCs we would come in to the Energy
19 Commission and propose for them, and I think that
20 would also mean an amendment to AQC-7, having the
21 reduction target go down.

22 HEARING OFFICER GEFTER: And that would
23 be provided under AQC-5, which --

24 MR. GALATI: Correct.

25 HEARING OFFICER GEFTER: -- already

1 covers that. Okay, good. That clears it up.

2 Also on page 5 in your testimony, Mr.
3 Birdsall, you indicate that air quality agencies
4 do not generally manage ammonia as a particulate
5 precursor except South Coast. And I wanted to
6 know what does South Coast do with ammonia.

7 MR. BIRDSALL: Okay, that's a good
8 question. Thank you for bringing it up. The
9 South Coast, and I'm fortunate because I just
10 worked on a licensing case down there -- the South
11 Coast currently recommends that ammonia slip from
12 large-scale, combined cycle power plants like this
13 one be reduced to 5 ppm. And so this project
14 would meet the South Coast standard for ammonia.

15 And that's how the South Coast would
16 manage it on this plant.

17 HEARING OFFICER GEFTER: All right, so
18 South Coast has a BACT of 5 ppm on ammonia slip?

19 MR. BIRDSALL: That's correct.

20 HEARING OFFICER GEFTER: And Bay Area is
21 10, but they were happy with the 5 in this case?

22 MR. BIRDSALL: I don't know what Bay
23 Area would -- I don't know if Bay Area would force
24 the applicant to reduce its emissions, because
25 there is no ammonia BACT.

1 HEARING OFFICER GEFTER: There is not
2 one at the Bay Area?

3 MR. BIRDSALL: In the Bay Area.

4 HEARING OFFICER GEFTER: Okay, all
5 right. So the difference is that South Coast
6 actually has adopted a BACT for ammonia slip?

7 MR. BIRDSALL: That's correct.

8 HEARING OFFICER GEFTER: Are you
9 familiar with the large power plants that the
10 intervenor has referred to in Massachusetts where
11 the ammonia slip limits are 2.0? Familiar with
12 that technology?

13 MR. BIRDSALL: Well, I'm only familiar
14 with them to the extent that the information has
15 been presented here.

16 PRESIDING MEMBER GEESMAN: Mr. Birdsall,
17 I have a relevant question. Have you had a chance
18 to read Mr. Stein's testimony?

19 MR. BIRDSALL: Yes, I have.

20 HEARING OFFICER GEFTER: I believe it's
21 exhibit 174 -- excuse me, 169.

22 MR. BIRDSALL: Could you read the title
23 of the exhibit so I get it correct? Or is that
24 his testimony --

25 PRESIDING MEMBER GEESMAN: Supplemental

1 testimony of David Stein.

2 MR. BIRDSALL: Okay, thanks.

3 PRESIDING MEMBER GEESMAN: If you turn
4 to his comment number six.

5 MR. BIRDSALL: Okay.

6 PRESIDING MEMBER GEESMAN: And I'd like
7 you to read to yourself the second paragraph in
8 response, the paragraph that starts, The San
9 Joaquin Valley airshed...".

10 MR. BIRDSALL: Yes.

11 PRESIDING MEMBER GEESMAN: Then it
12 continues over on the next page. My question is,
13 is there anything in that paragraph that you
14 disagree with?

15 MR. BIRDSALL: No. I would agree with
16 that paragraph.

17 PRESIDING MEMBER GEESMAN: Thank you.

18 HEARING OFFICER GEFTER: Also, Mr.
19 Birdsall, in your testimony at page 4, the
20 question was finding points of maximum impact
21 which occurred both in Alameda County to the west
22 and San Joaquin County to the east. And that was
23 confusing because it wasn't clear that this is
24 what you do in all projects -- for all projects,
25 or was it only in this case?

1 Because typically what I'm familiar with
2 is there is a point of maximum impact and it
3 remains the same in a particular location for a
4 particular plant.

5 MR. BIRDSALL: That's right. In a case
6 that was a little bit more routine I would say
7 there is one point of maximum impact, that is the
8 point of maximum impact. But I wanted to
9 highlight for the readers in the San Joaquin
10 Valley, especially, whether or not the impacts
11 from the San Joaquin County side of the project
12 were any different than the highest impact.

13 And so that sentence is intended to just
14 highlight that for the area that happens to be
15 within San Joaquin County, the highest impact is
16 such.

17 HEARING OFFICER GEFTER: Okay. But the
18 highest concentration is still to the west?

19 MR. BIRDSALL: But the highest
20 concentration overall is to the west.

21 HEARING OFFICER GEFTER: All right. And
22 also with respect to cumulative impacts, you noted
23 that cumulative impacts are going to be higher
24 than the direct impacts in the San Joaquin Valley,
25 or east of the project?

1 MR. BIRDSALL: Well, that's right. The
2 cumulative impacts are higher because we're
3 including all of the cumulative sources. And --

4 MR. KRAMER: So they would always be
5 higher.

6 MR. BIRDSALL: -- they would always be
7 higher because there are more sources in the
8 model.

9 HEARING OFFICER GEFTER: Where would the
10 point of maximum cumulative impact be? Would that
11 be to the west or to the east? Or do you model
12 that?

13 MR. BIRDSALL: Well, that's a good
14 question. And if I didn't explain it in this
15 testimony then it's in the final staff assessment
16 of where the maximum cumulative impacts would
17 occur. So let me just dig that out for a moment.

18 When all of the cumulative sources are
19 taken into account the final staff assessment
20 shows, and this is page 4.1-50, the cumulative
21 assessment shows that the peak impact becomes very
22 close to the Tesla cooling tower.

23 And the reason for this is the wind
24 directions must be such that the air that's coming
25 close to the Tesla Power Plant from upwind

1 locations like the East Altamont Power Plant and
2 the other sources in the cumulative model, then
3 add up with the Tesla cooling tower impacts, and
4 cause the highest cumulative impact to be actually
5 right next to the cooling tower at Tesla.

6 HEARING OFFICER GEFTER: So that's the
7 point of maximum impact for cumulative impact
8 analysis in this project?

9 MR. BIRDSALL: Right.

10 HEARING OFFICER GEFTER: Thank you.
11 Cross-examination? Where did Mr. Sarvey go? Why
12 don't you ask your questions, Mr. Boyd.

13 MR. BOYD: Certainly.

14 CROSS-EXAMINATION

15 BY MR. BOYD:

16 Q I'm a little confused about the role
17 of -- sorry -- I had some questions about the
18 ammonia issue. In your testimony you seem to be
19 saying that the secondary formation due to the
20 presence of ammonia slip from the project, that
21 really there was no, since it's not regulated, am
22 I interpreting it's not regulated, that it's not
23 really required to be identified as impacting
24 particulate matter? Is that true?

25 A Well, in --

1 Q Or did I mischaracterize --

2 A -- an effort to simplify my position on
3 ammonia, the effect and the consequences of
4 ammonia on PM10 are variable and uncertain. I
5 would like to try to reiterate that, because as
6 we've seen already the chemical reactions that
7 take place in order to convert the ammonia to a
8 particulate matter are complicated, they're
9 dynamic and they're very difficult to model.

10 And there is no consensus among the
11 regulating agencies, including the San Joaquin
12 Valley Air District. There is no consensus on how
13 ammonia should be managed.

14 So staff's position is to minimize the
15 ammonia emissions from the plant, and then to
16 fully offset the other precursors.

17 Does that answer your question?

18 Q Yeah, well, you said -- you answered
19 that they were basically -- your answer is you
20 have minimized the production of ammonia, but it's
21 not really clear. Are you saying that there's no
22 impact of ammonia emissions on production of PM,
23 or are you saying that it's just uncertain. And
24 therefore you're just limiting the ammonia
25 emissions because it's not certain?

1 A Well, because it's uncertain we're
2 requiring, and we request that the applicants
3 minimize their emissions.

4 Q Right. Now, is it also interesting that
5 there's no requirement under the Clean Air Act for
6 controlling ammonia emissions?

7 A No, there is not.

8 Q And is it your understanding that in
9 this process it's the role of the Air District to
10 determine compliance with requirements for the
11 Clean Air Act, et cetera?

12 A Well, that's one of the components of
13 the staff assessment, compliance with LORS.

14 Q Is it staff's role, then, for us to
15 insure noncompliance say with the Clean Air Act,
16 which is a federal statute, but to insure
17 compliance with CEQA, which is a state statute?

18 HEARING OFFICER GEFTER: You know what,
19 I'm going to end this line of questioning, because
20 you're asking the witness to give you a legal
21 analysis of the role of the different statutes --

22 MR. BOYD: Well, I'm trying to find out
23 if this -- when he makes a statement that, based
24 on the statements -- I'm trying to separate if
25 there's a requirement under the federal law or the

1 state law to provide some mitigation --

2 HEARING OFFICER GEFTER: Why don't you
3 ask him the direct question.

4 MR. BOYD: Okay.

5 HEARING OFFICER GEFTER: If it's a CEQA-
6 related question, ask it.

7 MR. BOYD: It's a CEQA-related question.

8 BY MR. BOYD:

9 Q Under CEQA, if there's any potential for
10 an impact from the ammonia emissions to produce
11 particulate matter, are we not required to
12 mitigate those impacts?

13 A Absolutely.

14 Q So, what mitigation then are you
15 offering besides -- so your offer is, your
16 mitigation you're offering up is to reduce those
17 ammonia emissions to 5 parts per million?

18 A Our mitigation for ammonia is twofold;
19 it includes, yes, minimizing the ammonia to 5
20 parts per million for ammonia slip; and then
21 secondly, full offsets of the other precursors of
22 nitrogen oxides and sulfur oxides.

23 Q Now, also you were talking about the
24 complex nature of the formation of the particulate
25 matter, but you had to have certain precursor

1 compounds present. When you did that analysis did
2 you consider the presence of mobile source
3 precursors? And would those also be -- I'm
4 saying, the existing ambient background that comes
5 from, I assume, from mobile sources, not
6 stationary sources, in your analysis did you
7 consider the fact that these mobile sources are
8 going to be the major source of the precursors
9 that are going to react with ammonia? Or did you
10 base it on just precursors coming from the plant,
11 itself?

12 A Well, I always take into account the
13 setting of the project. And the environmental
14 setting here in the Central Valley includes, as
15 you're well aware, lots of mobile source activity.

16 It also includes lots of agricultural
17 source activity. And what happens is, as we've
18 talked about earlier today, the airshed, it's got
19 nitrogen oxides present; it's got ammonia present.
20 And the project is coming along and is going to
21 emit some of each. And I look at the project
22 emissions in that context and the strategy for
23 minimizing the effects or reducing the impacts of
24 the ammonia to a less than significant level, is
25 to do this twofold approach, like I've said, fully

1 offsetting the nitrogen oxides from the project,
2 and then minimizing its ammonia.

3 Q Okay, and there was one other thing that
4 I was kind of confused about. You seem to be
5 suggesting that over time things are going to get
6 better in the San Joaquin Valley, and that might
7 be a reason why the numbers are artificially high
8 in this case. Do you have any empirical basis for
9 that, like previous -- can you point to some air
10 inventories for the Valley that show a trend
11 downward as opposed to upward? All I've seen is
12 upward trends.

13 And, in fact, the recent change in
14 status -- nonattainment would suggest that we're
15 going in the opposite direction. And if that is
16 the case, that we are going in the opposite
17 direction, wouldn't you therefore be required to
18 provide more mitigation upfront to accommodate
19 that, by the same logic?

20 A I would not dispute that the Central
21 Valley has had difficulty in reducing its PM10
22 concentration historically. We're talking mainly
23 about PM10 here. And the area has been re-
24 designated downward in its quality.

25 But I do have information that indicates

1 that in the future the mobile source sector will
2 cause less and less emissions even though people
3 will be driving more and more vehicle miles
4 traveled, and there will be more vehicles here.

5 The San Joaquin Valley Air District,
6 when they prepared their 2003 PM10 plan, which is
7 currently proposed for approval by the USEPA, the
8 PM10 plan for the region takes a look at all of
9 these different sources and how they change over
10 time. And the mobile source sector in that plan
11 is shown to substantially reduce its carbon
12 monoxide emissions and its nitrogen oxides
13 emissions, and also the PM10 from the tailpipes
14 are essentially staying the same. But what's
15 happening in the mobile source sector is that the
16 reductions of the nitrogen oxides and the other
17 organic compounds are helping to offset the growth
18 in mobile source activity to such a point that the
19 PM10 concentrations are predicted to decline. And
20 that's the background case.

21 So when I set up my cumulative
22 assessment and I use a background condition from
23 1999, but I'm trying to portray a future case, for
24 example when Mountainhouse is all built out in
25 2020, and the Tesla and East Altamont Power Plants

1 are sitting there doing their thing, taking a
2 background condition from 1999 is the worst case.
3 Because the predictions of background
4 concentrations, and the only agencies that I would
5 trust to predict this are the San Joaquin Valley
6 Air District and the ARB, with the EPA reviewing
7 and blessing the plan, all of that evidence points
8 to a decline in background concentrations.

9 And it has to incorporate the growth of
10 sprawl in the area, the growth of Walmarts and,
11 you know, single family housing and commuters
12 going off to Sacramento and the Bay Area. All of
13 that is included in the plan.

14 Q So you're saying all things considered,
15 considering the downward trend in emissions for
16 mobile sources over time, coupled with the
17 increase in population over time, all things
18 considered that it's your position that things are
19 going to go down?

20 A That's true.

21 Q Thank you.

22 HEARING OFFICER GEFTER: Mr. Sarvey.

23 MR. SARVEY: Yes, thank you very much.

24 CROSS-EXAMINATION

25 BY MR. SARVEY:

1 Q You testified that emissions from mobile
2 sources should be included as background. And we
3 have several certified EIRs here in front of me.
4 For instance, the Gateway project, 180 tons of
5 VOC, and approximately 320 tons of NOx. We've got
6 a couple of other projects similar types of
7 impacts. They're certified EIRs.

8 And the San Joaquin Valley Air Pollution
9 Control District has commented on these EIRs.
10 Certified them and said that, yes, there is a
11 significant impact that will not be mitigated.

12 Now, how can you include those elements
13 as background, when the majority of those
14 emissions from those developments is mobile
15 sources, the San Joaquin Valley Air Pollution
16 Control District has said, yes, this is a
17 significant impact.

18 Can you explain to me how you can
19 include those as mobile sources?

20 HEARING OFFICER GEFTER: Referring to
21 exhibits --

22 MR. SARVEY: -- I mean --

23 HEARING OFFICER GEFTER: You're
24 referring to exhibits 115 and 116?

25 MR. SARVEY: Yes.

1 BY MR. SARVEY:

2 Q Can you explain to me how, when the
3 permitting agency of the City of Tracy has
4 admitted it's a significant impact that will not
5 be mitigated; the Air Pollution Control District
6 has stated in these EIRs that it is a significant
7 impact that will not be mitigated, how you can
8 include those as background?

9 A I understand that the City of Tracy,
10 when they permit the land use developments that
11 we're talking about, they commonly will allow the
12 mobile source sector to emit and to emit in
13 quantities greater than the CEQA significance
14 threshold that is recommended by the San Joaquin
15 Valley Air District. And the City of Tracy, and
16 many other cities around anywhere, including the
17 Bay and including Modesto and Stockton, they will
18 approve land use development projects that do
19 cause significant unavoidable, many say, air
20 quality impacts.

21 And what that means is that the City of
22 Tracy has approved a project without looking for
23 offsets to offset their mobile source emissions,
24 for example.

25 When I look at the long-term picture of

1 the background concentrations of ozone or the
2 background concentrations of PM10 in the Central
3 Valley and the Stockton monitoring station, I
4 cannot discretely model every year of changing
5 source activity and every change of mobile source
6 activity. It's just simply impossible. It would
7 be impossible to track all of the regional
8 activity. The vehicles that are caused by
9 Mountainhouse are starting maybe in Mountainhouse,
10 but they're driving off to go to work in Modesto.

11 To model something like that for every
12 year in the future is just beyond the scope of the
13 assessment. And the evidence that I have that
14 allows me to be comfortable with the methodology
15 I've proposed is that the San Joaquin Valley Air
16 District is revising its ozone plan right now.
17 And as it revises its ozone plan it has to take
18 into account the changes in land use patterns like
19 the growth in residential development around here.

20 It just recently revised its PM10 plan,
21 so I'm pretty confident that the PM10 plan
22 captures most of the boom in the Valley's
23 population growth. And because the PM10 plan
24 captures this population growth and this growth in
25 vehicle miles traveled and the growth in vehicles

1 just in number, I believe that the PM10 plan is
2 accurate. And that in the future, yes, background
3 concentrations will decline.

4 So, the method of handling the mobile
5 source emissions is very simple, but I think it's
6 also accurate.

7 MR. GALATI: Ms. Gefter, I need to
8 entertain an objection to this line of questioning
9 for this reason. The mitigation under CEQA, the
10 legal mitigation under CEQA, the most mitigation
11 that you could employ on this project is its
12 contribution to cumulative impact.

13 Staff found a significant cumulative
14 impact, and as a result made us mitigate above and
15 beyond what the Air Quality Management District
16 made for San Joaquin Valley, such that we are
17 accounting for almost molecule-for-molecule each
18 one of our emissions.

19 Now, whether the impact that staff
20 calculated was 5.1, 6, 6.2, 7.9, 9.7, the most you
21 could make us mitigate, and we are now accepting
22 that mitigation, is total mitigation of our own
23 contribution. We cannot, nor do we have any
24 responsibility to mitigate for Tracy Gateway or
25 Tracy or East Altamont. We can't offset their

1 plants. Ours is fully offset and we've had two
2 experts testify to that effect, that the full
3 direct impacts are mitigated.

4 So we can go down the road as to how the
5 modeling should have been done, but it's basically
6 irrelevant at this stage. The Committee would not
7 be imposing additional mitigation, I think, in
8 following CEQA.

9 MR. SARVEY: Number one, I don't think
10 this witness, since staff's attorney has not
11 objected, I don't think it's a valid objection.

12 Number two, where I'm going is not that
13 these people haven't fully mitigated, although I
14 don't think they have. I'm going to the fact that
15 this project should not be sited here no matter
16 what mitigation is provided, because the people
17 that have gone in advance of you have sited so
18 many unmitigated projects that it just doesn't
19 make sense to put another project here. You've
20 already put East Altamont 1100 megawatts; you put
21 GWF 169 megawatts. And we've got all these other
22 projects.

23 I mean at some point we have to draw a
24 line and say, well, we've got enough projects.
25 I'm not questioning this portion, whether they

1 fully mitigated the project, I don't believe they
2 have. But, --

3 MR. KRAMER: Well, and that's a policy
4 argument that has nothing to do with the topic, I
5 think.

6 MR. SARVEY: That's exactly the topic.
7 We're here to discuss whether this project can be
8 sited here. It has to look at the conditions that
9 -- the conditions have not been looked at, and
10 that's my point.

11 HEARING OFFICER GEFTER: All right.
12 Actually, to all parties, this is an issue that
13 you could brief to us if, at the end of this
14 hearing you feel you want to argue it. In the
15 meantime, why don't we go on and you can ask your
16 questions.

17 MR. SARVEY: Okay, --

18 MR. GALATI: I withdraw the objection;
19 you can continue to ask.

20 MR. SARVEY: Thank you.

21 BY MR. SARVEY:

22 Q Brewster, is it your testimony that CARB
23 has projected that PM emissions from cars is
24 actually going to decrease over time, is that your
25 testimony?

1 A No. My testimony is not that PM from
2 the automobiles will decrease, but that the
3 background conditions of PM10 in the Valley will
4 tend to improve. And that's a combination of PM10
5 precursors -- well, it is probably mostly
6 attributed to the improvement of PM10 precursors.

7 When you look at vehicle miles traveled
8 PM10 directly from the mobile source sector is
9 about steady. And the improvements in nitrogen
10 oxides and VOCs will improve the chemistry in the
11 region to the point where secondary PM10 formation
12 and background concentrations of PM10 will
13 improve.

14 Q I'm holding in my hand the 2003
15 Almanac -- final from CARB. I'd like to give you
16 a copy of it. And I want you to read to me the
17 protected emissions from light passenger vehicles
18 and light duty trucks for the handout I'm about to
19 give you.

20 HEARING OFFICER GEFTER: Mr. Sarvey, you
21 could give all the parties copies of this handout.
22 You need to tell us where you got it from. It's
23 not necessary for the witness to read it out loud.
24 You just ask the question.

25 There's just one copy? How many copies

1 do you have?

2 (Pause.)

3 BY MR. SARVEY:

4 Q Earlier you said you trust CARB's
5 determinations on these matters, so I'll point to
6 you on page 3 of 4 there where it says onroad
7 motor vehicles, and if you look at the column
8 light duty passengers, PM10 emissions from light
9 duty passenger trucks is expected to increase from
10 .28 tons per day to .296 in 2002, .318 in 2005,
11 and .356 in 2010.

12 Now, does that indicate any type of
13 reduction in PM10 emissions from mobile sources in
14 the San Joaquin Valley or County?

15 A When you are portraying the -- well, let
16 me back up. I'm familiar with this kind of data.
17 I didn't print this out, myself, of course, but
18 I've reviewed this and I understand your concern.
19 What you are illustrating, however, is only a part
20 of the overall picture.

21 You are focusing on light duty passenger
22 vehicles, and yes, the PM10 from this source
23 category does increase over the period from 2000
24 to 2010. But I'd like to draw everybody's
25 attention to the lower half of this same page

1 where the bold row is highlighted, total onroad
2 motor vehicles.

3 And total onroad motor vehicles shows
4 that the PM10 trend is actually fairly stable
5 throughout the future ten-year horizon, or six-
6 year horizon, out to 2010 at least.

7 The other part of this picture -- so I
8 want to just remind everybody that we have to look
9 at all mobile sources together.

10 The other part of this picture are the
11 reactive pollutants that cause PM10 to form
12 secondarily in the atmosphere. And those are the
13 pollutants of nitrogen oxides and VOCs, especially
14 nitrogen oxides. Those contaminants, if we
15 printed out a very similar page from ARB which
16 maybe you have or maybe you're familiar with, but
17 we could print out a similar page that focuses on
18 nitrogen oxides and show that the reductions in
19 nitrogen oxides are actually fairly substantial.

20 The reductions in nitrogen oxides would
21 reduce the ambient PM10 concentrations, because
22 the nitrogen oxides are all reacting in this
23 broth. As we've talked about for ammonia, the
24 nitrogen oxides is a precursor to PM10 formation.

25 HEARING OFFICER GEFTER: Before we go on

1 about this document, Mr. Sarvey, you did not
2 identify it for the record. And since we have
3 been talking about it we need to number it exhibit
4 178, and indicate to us where you got it.

5 MR. SARVEY: I got it off the website,
6 CARB website. It's the 2003 Almanac data file
7 particulate matter less than 10 microns, projected
8 emission inventory for San Joaquin County.

9 HEARING OFFICER GEFTER: Okay. And
10 since the witness has responded to your question
11 about this document is there any objection to
12 receiving this into the record?

13 MR. GALATI: No objection; this document
14 can come in.

15 MR. KRAMER: No.

16 HEARING OFFICER GEFTER: Okay. Exhibit
17 178 will be received into the record. I'm going
18 to hand it to the reporter so you can look at it
19 and write it down.

20 Okay, you may move on, Mr. Sarvey. I
21 think we've covered this quite a bit.

22 MR. SARVEY: Okay.

23 BY MR. SARVEY:

24 Q Mr. Ngo's exhibit, exhibit 111, he
25 models PM10 there, doesn't he? Does he model

1 ozone or does he model any other precursor?

2 A The model that Mr. Ngo compared for East
3 Altamont is for PM10 only, with no precursors.

4 Q Okay. Has staff or anyone modeled what
5 the NO2 impacts might be from all these projects?
6 Do we know that all these projects together might
7 contribute to a violation of the NO2 standard? Do
8 we know that?

9 A Well, for the purpose of our analysis,
10 first of all, I'll start off by saying that there
11 are no existing violations of NO2 in the area.
12 And so in order to cause an impact to nitrogen
13 dioxide, the project or all of the cumulative
14 development would have to, by itself, cause a
15 violation.

16 That means that it would have to
17 overwhelm the background condition of NO2 and
18 create a new violation.

19 I don't think that the State of
20 California anywhere, at least in the past say ten
21 years, has had an NO2 violation. And so I think
22 it would be very unlikely to cause a new violation
23 here in Tracy. The reason is because NO2 is,
24 although it does come from nitrogen oxides, the
25 mechanisms that go into forming NO2 are almost as

1 complicated as those that go into forming ozone.

2 You have the nitrogen oxides reacting in
3 a number of ways, and ultimately they will cause
4 NO2 concentration. But it's sympathetic to the
5 ozone concentrations; ozone scavenges NO2, so
6 impacts of NO2 and violations of NO2 are very
7 uncommon. And I wouldn't expect them here or
8 really on any of the projects that I've looked at
9 recently.

10 Q But since we haven't modeled all these
11 projects, it is possible?

12 HEARING OFFICER GEFTER: Okay, Mr.
13 Sarvey, where are we going with this? Can we move
14 on and ask --

15 MR. SARVEY: Sure, we can move on.

16 HEARING OFFICER GEFTER: Okay.

17 BY MR. SARVEY:

18 Q Brewster, in your previous testimony
19 when you arrived at the amount of emission
20 reductions you require from the applicant in AQ-7,
21 you used a 70 percent effectiveness ratio that you
22 borrowed from the East Altamont Energy Center
23 staff, is that correct?

24 A Well, there are a number of factors that
25 go into the calculation of this project's

1 mitigation scheme. And the numbers in AQC-7
2 encapsulate a number of assumptions, and some of
3 them I've drawn from the San Joaquin Valley Air
4 District, some of them I've drawn from other
5 Energy Commission cases. And one of the factors
6 is the 70 percent factor for Bay Area emission
7 reduction credits that are located in the
8 Carquinez Strait region.

9 Q And that was from the East Altamont
10 Energy Center staff analysis, correct?

11 A That's correct.

12 Q Okay. Now are you aware that in the
13 East Altamont Energy Center filed PMPD on page 144
14 the Committee said the following: Staff adopted
15 70 percent factor for emissions from Pittsburg
16 area. This was adopted because staff felt
17 applying the 27 percent transport factor would be
18 too punitive. Our analysis of the transport
19 factor is equally applicable here. We find no
20 logical basis for a 70 percent factor."

21 Were you aware of that when you adopted
22 that for your analysis?

23 HEARING OFFICER GEFTER: Okay, Mr.
24 Sarvey, that was the original PMPD, and that's not
25 the decision.

1 MR. SARVEY: That's the final decision -

2 -

3 HEARING OFFICER GEFTER: That was the
4 final decision?

5 MR. SARVEY: -- directly out of the
6 final decision.

7 HEARING OFFICER GEFTER: Okay. Well, we
8 can take administrative notice of what the final
9 decision says. No need to ask the witness about
10 that.

11 MR. SARVEY: Well, I just want to know
12 if he was aware of that, if he adopted that --

13 HEARING OFFICER GEFTER: Why is it
14 relevant to whether he's --

15 MR. SARVEY: Well, it's very relevant --

16 HEARING OFFICER GEFTER: -- aware of it?

17 MR. SARVEY: -- because the emission
18 reduction credits that were applied for the
19 Pittsburg -- 70 percent benefit to San Joaquin,
20 and the PMPD for East Altamont clearly rejected
21 that.

22 HEARING OFFICER GEFTER: The PMPD, but
23 did the final decision?

24 MR. SARVEY: The final decision clearly
25 rejected that premise, clearly rejected it. And I

1 think it's very significant here. That's why I'm
2 saying that this project is not fully mitigated.

3 HEARING OFFICER GEFTER: Again, there's
4 no need for the witness to answer that. And you
5 can argue that to us.

6 MR. SARVEY: Okay, thank you.

7 BY MR. SARVEY:

8 Q In your testimony on page 5 of exhibit
9 128 you testified that due to the uncertainty in
10 the conversion rate of ammonia staff recommends
11 minimizing ammonia slip, that's correct?

12 A Are you referring to my testimony from
13 March 30th?

14 Q Yeah.

15 A Yes, that's correct.

16 Q Okay, and you've examined exhibit 113,
17 is that correct, the CARB report on NOx controls
18 in appendix A and B?

19 A Yes, I've taken notice of that. I think
20 this is the draft document for NOx control.

21 Q Right. And in that document there are a
22 couple of large combined cycle projects that have
23 achieved in practice and have been permitted at 2
24 ppm NOx, 2 ppm ammonia slip, A&P Blackstone
25 project, which I have provided as an exhibit, and

1 the Mystic Station.

2 After reviewing this information do you
3 consider a 2 ppm NOx level and 2 ppm ammonia slip
4 level feasible for a large combined cycle project?

5 A The determination of feasibility does
6 not solely rest with me. It depends on the
7 operator experience; it depends on the longevity
8 of the power plant and its ability to repeat its
9 performance; and the regulatory environment.

10 The regulatory environment in
11 California, except for the South Coast as I've
12 said, does not capture ammonia. Now,
13 notwithstanding, we've sought to reduce large-
14 scale, combined cycle power plants from 10 ppm
15 ammonia slip, which had kind of been the project
16 proponents' standard operating procedure, to 5 ppm
17 ammonia slip. And we sought that and we have been
18 seeking that on cases including Tesla. And
19 fortunately, Tesla is proposing 5 ppm ammonia
20 slip.

21 Whether or not a lower ammonia slip
22 number can be achieved on a long-term basis I
23 cannot say. What I can say today is that we are
24 comfortable that a 5 ppm will be achieved. It
25 will be achieved year-in and year-out for the life

1 of the project. And that it represents the
2 minimum today.

3 And in Massachusetts they may have a
4 more stringent regulatory scheme for ammonia,
5 depending on maybe the atmospheric chemistry or
6 the availability of sulfur oxides, for example, to
7 react with the ammonia, and they may be forcing
8 lower levels in their permit conditions, but I
9 don't have experience with the operating history
10 of these plants and their ability to achieve that
11 ammonia slip limit in the long term. I don't know
12 if they can achieve that at year five, or at year
13 25.

14 And I'm not saying that I need to wait
15 for 25 years of operating experience, but I think
16 that what this draft document from the California
17 Air Resources Board is showing is that here in
18 California we are looking to improve the ammonia
19 slip performance of our power plants. And this
20 might be good evidence, but I just can't say at
21 this time whether or not it is the lowest
22 achievable rate.

23 HEARING OFFICER GEFTER: Thank you, Mr.
24 Birdsall. Let's go off the record.

25 (Off the record.)

1 BY MR. SARVEY:

2 Q Staff, in previous cases, most notably
3 the Walnut Energy Center, East Altamont Energy
4 Center and the Cosumnes project, staff has
5 testified that even in an ammonia rich area,
6 ammonia conversion emissions from a power plant
7 could result in a conversion rate to PM2.5 as high
8 as 30 percent. Do you disagree with that
9 assessment?

10 A On those cases staff is creating a
11 position to force the applicant to change its
12 project proposal to minimize the ammonia slip.
13 So, staff prepares the evidence to build its case
14 that ammonia will cause some kind of particulate
15 impact.

16 We have, with this case, the ammonia
17 slip mitigated to a less than significant level.
18 And so the analysis that was done for East
19 Altamont and Cosumnes may not apply in this case.

20 I'm not saying that I disagree with
21 staff, but I'm saying that I didn't prepare an
22 assessment like that because this project came in
23 with a proposal that was acceptable.

24 Q So, if this is correct, you don't
25 disagree with their assessment, if the Tesla

1 project --

2 HEARING OFFICER GEFTER: I think you're
3 mischaracterizing --

4 MR. SARVEY: Oh, I'm sorry.

5 HEARING OFFICER GEFTER: -- the witness'
6 testimony --

7 MR. SARVEY: If -- if --

8 PRESIDING MEMBER GEESMAN: -- he didn't
9 disagree.

10 MR. SARVEY: Okay. Well, we don't know
11 what he --

12 HEARING OFFICER GEFTER: Just go on with
13 your next --

14 BY MR. SARVEY:

15 Q If the Tesla project emits 186 tons of
16 ammonia a year, and staff is right that it could
17 convert at a 30 percent rate, that would be an
18 additional 56 tons per year secondary PM2.5, do
19 you think that 56 tons per year secondary PM2.5
20 would be a significant impact?

21 HEARING OFFICER GEFTER: That's a
22 hypothetical. Okay, --

23 MR. SARVEY: Hypothetically speaking.

24 HEARING OFFICER GEFTER: You can move
25 on; that's a hypothetical question. Let's move on

1 about this case.

2 MR. SARVEY: Well, I am talking about
3 this case.

4 HEARING OFFICER GEFTER: I think that
5 was --

6 MR. SARVEY: I'm talking about staff's
7 previous decision that 30 percent would convert,
8 and that's a perfectly legitimate question. It
9 converts to 56 tons.

10 BY MR. SARVEY:

11 Q Is that a significant fact? That's a
12 yes or no question.

13 A I think that the conversion is variable
14 and uncertain. And so I would not agree that
15 necessarily the project could cause 56 tons of
16 ambient particulate matter.

17 Q I want to draw your attention to the
18 exhibit that Mr. Geesman asked you about, the same
19 paragraph, 169, Mr. Stein's testimony. And I want
20 to discuss the same paragraph he did.

21 Particularly I want to talk about, it
22 says: ARB has not identified ammonia injection for
23 NOx control as an important source of ammonia.
24 And has assigned the source category a low
25 priority source of atmospheric ammonia emissions

1 in the Valley."

2 Has ARB issued guidance that power
3 plants should adopt 5 ppm or less for ammonia
4 slip? And I want to emphasize "or less". I
5 believe it's their 1999 guides. I have, as an
6 earlier exhibit, one of our --

7 A I'm familiar with that, and I think that
8 the recommendation from the ARB was to the Air
9 Quality Management Districts to determine whether
10 or not ammonia control would be beneficial for
11 managing particulate matter.

12 And I think that the jury is still out
13 on that. And because the ARB document says that
14 essentially the ammonia slip should be controlled
15 to 5 ppm, we believe that that is an achievable
16 level. And so it represents the lowest achievable
17 level.

18 Q And so the statement that the ARB has
19 not identified ammonia injection for NOx control
20 is not really a true statement, then. The ARB has
21 identified it as a significant precursor and it's
22 therefore issued guidance limit to 5 or less,
23 correct?

24 MR. GALATI: I object to the
25 mischaracterization of Mr. Stein's testimony. Mr.

1 Stein's testimony says, "The ARB has not
2 identified ammonia injection for NOx control as an
3 important source of ammonia and has assigned a
4 source category a low priority source of
5 atmospheric ammonia emissions in the Valley."
6 That's the entire context of his statement.

7 MR. SARVEY: -- answer that question.

8 HEARING OFFICER GEFTER: You're going to
9 ask another question?

10 MR. SARVEY: No, I'm asking that exact
11 same question, word-for-word. Hasn't ARB, the
12 fact that they've adopted that, sort of make that
13 statement false?

14 HEARING OFFICER GEFTER: Yeah, okay.
15 You know what, I think what Mr. Galati has just
16 indicated to us is that it speaks for itself.

17 Are you asking Mr. Birdsall whether he
18 agrees or disagrees? I believe he's already --
19 that question was asked and he answered it. So,
20 basically we're going in circles here. I'm not
21 sure what --

22 MR. SARVEY: Well, I'm specifically --

23 HEARING OFFICER GEFTER: -- you're
24 getting at --

25 MR. SARVEY: -- he testified that he

1 agreed with this entire paragraph. And I'm
2 pointing out that the ARB has already issued
3 guidance. So, I mean the fact to say that ARB
4 doesn't think NOx control and ammonia is important
5 is a misstatement. And that's all I'm trying to
6 point out. I'll move on.

7 BY MR. SARVEY:

8 Q The San Joaquin Valley Air Pollution
9 Control District has adopted many attainment
10 plans. Have you seen any significant improvement
11 of ozone violations over the last few years?

12 A The background concentrations that were
13 current and up to date at the time of the final
14 staff assessment are in the final staff
15 assessment. And that data is available in my
16 final staff assessment.

17 I haven't looked for the year 2003
18 specifically; or for last week.

19 Q In 2001 the state exceedances were 123;
20 2002 they were 127; and in 2003 they were 131.
21 Does that indicate any kind of general trend
22 towards improvement, even though supposedly
23 emissions are decreasing?

24 A I think you have to consider trends on a
25 longer term average than just looking at three

1 discrete years.

2 MR. SARVEY: Okay, nothing further.

3 HEARING OFFICER GEFTER: So you're
4 finished? Okay. Thank you.

5 Do you have any redirect of your
6 witness?

7 MR. KRAMER: One or two.

8 REDIRECT EXAMINATION

9 BY MR. KRAMER:

10 Q Mr. Birdsall, do you know why the San
11 Joaquin District recently decided to be
12 reclassified as far as their federal status goes?

13 A The reclassification is an effort to
14 give the District more time to reduce its
15 likelihood of causing violations. It gives the
16 District more time to plan for attainment; and so
17 that the test of attainment will occur now, I
18 think, in the year 2010 or sometime in the future
19 beyond that. But it gives the District more time
20 to make these reductions.

21 Q So it doesn't necessarily mean that
22 things are getting worse; it may mean that things
23 just aren't getting better soon enough?

24 A That's one way to put it.

25 MR. KRAMER: I guess that's my two

1 questions.

2 HEARING OFFICER GEFTER: Do you have
3 anything further?

4 MR. GALATI: No.

5 HEARING OFFICER GEFTER: Okay, at this
6 time we're going to discuss the applicant's
7 comments -- we're going to discuss the applicant's
8 comments, but why don't we do that during the
9 comment period later so that we can move along.

10 And right now I'm going to take public
11 comment. And Ms. Connie Hoag was here to make a
12 comment. And if you'd like to come forward at
13 this time.

14 MS. HOAG: Good afternoon. I'm a little
15 disorganized here because I've been taking notes
16 on the run, so I'll do my best.

17 HEARING OFFICER GEFTER: Okay, just tell
18 us your name, please, and spell it.

19 MS. HOAG: My name is Connie Hoag. And
20 I appreciate the opportunity to comment on this.

21 I was born and raised here in the
22 Valley, and I moved to Washington State and lived
23 up there for 13 years. While I was in Washington
24 State I served on the Northwest Air Pollution
25 Authority as a Board Member for two terms. And I

1 served as a County Councilmember for four years.

2 And I'm very concerned about the choice
3 of this location for this power plant, in addition
4 to the other power plants that are being located
5 here.

6 We have a long time board member on the
7 Northwest Air Pollution Authority that stated at
8 one meeting that if there was one thing he wished
9 the public knew it was that the air pollution
10 authority cannot protect them from bad land use
11 decisions. They have no discretion. It's simply
12 if it's a square peg it goes in a square hole; if
13 it's a round peg it goes in a round hole. All
14 they do is regulate.

15 The approval decision is the point at
16 which the discretion is, is this a good idea,
17 should this be located here.

18 I've heard some comments just while I'm
19 sitting here, and I've heard so many comments when
20 I've served in public office where people said,
21 well, they wouldn't let it go in if it was going
22 to hurt us. Or the standards will protect us, et
23 cetera. And I'm sure you've heard enough
24 testimony, or at least I hope you have, that would
25 let you let go of that notion if you ever held it.

1 In regards to air quality, one of the
2 projects that came before our board was a
3 comparable but smaller power plant, which was 660
4 megawatts. It's still in the permitting process.
5 Very similar design using SCR technology to reduce
6 NOx, et cetera. And the annual particulate matter
7 on it was the equivalent of 330,000 cars. That
8 was a 660 megawatt plant.

9 If you look at this plant and the East
10 Altamont project, and the Tracy Peaker Plant, et
11 cetera, you're going to have a cumulative impact
12 of nearly a million cars. And I don't care how
13 clean those cars are, that is a huge impact. And
14 actually, if you talk about cars getting cleaner,
15 that 330,000 number is from two years ago. So if
16 you were comparing them with cleaner cars it would
17 be even more cars equaling the impact of that
18 plant.

19 I share Mr. -- is it Sarvey? -- Sarvey's
20 concern about the, I'm not sure quite what you'd
21 call it, the averaging emissions over the six-
22 month period, rather than saying, look, in this
23 particular time period when we've got these peak
24 ozone levels you can't exceed this amount.
25 Because the health impacts don't care about what

1 happened last month or what happens next month.

2 It's what's in the air that you're going to
3 breathe at that time. And as public officials,
4 and as serving on the Commission, that's what your
5 concern should be, is protecting the public and
6 looking at what is the impact of this plant going
7 to be on the health.

8 I hear, in sitting in the audience,
9 comments about mitigation and offsets that make it
10 almost like the plant isn't going to even be here.
11 And then when I look at where the offsets are
12 proposed and what the offsets are actually made up
13 of, and what the local impacts will actually be, I
14 couldn't disagree more. It's going to have a huge
15 local impact. And to have that impact right next
16 to the East Altamont one is just something beyond
17 my comprehension. I can't even imagine it being
18 proposed, much less considered, much less
19 approved.

20 I wanted to know what kind of modeling
21 was done by the Commission's consultant in
22 determining the cumulative impacts. I was
23 glancing through very briefly, but was it Cal
24 Puff? I don't know what was used.

25 HEARING OFFICER GEFTER: Okay. You

1 know, when you finish speaking, maybe later off
2 the record you can talk directly with our staff.

3 MS. HOAG: Okay. Well, then in order to
4 get concern on the record about the modeling, in
5 the project that was proposed that I was working
6 with up there, the modeling that was done was
7 highly inadequate. And there were experts that
8 were brought in that showed that the impacts would
9 actually be up to 3 mcg/cubic meter greater than
10 the very basic run-of-the-mill modeling that had
11 been done that really didn't look at what the
12 atmospheric conditions were, what the topography
13 was like, et cetera.

14 And so I would ask that the Commission
15 take a hard look at the modeling and make sure
16 that it is good accurate modeling.

17 HEARING OFFICER GEFTER: Okay, in the
18 final staff assessment that staff submitted
19 reference to all the modeling is included in that
20 document. Also, the applicant submitted their
21 impacts analysis also using EPA-approved modeling.
22 And so, you know, rather than go into details, you
23 can speak to them later and they will direct you
24 to the actual documentation.

25 MS. HOAG: Yeah, and I have the

1 document, just haven't had a chance to look
2 through it. And I'm sorry, I'm undergoing cancer
3 treatment and I'm pressed for time. I have sat
4 out hoping that this thing would be killed a long
5 time ago because I couldn't imagine that it would
6 be considered. But I decided it's time for me to
7 just speak up. So I hope you'll take into
8 consideration what I have to say.

9 Regarding standards, there's a couple
10 things that were mentioned on standards. One of
11 them, as you know, well, we did the modeling and
12 it meets the standards, blah, blah, blah. I can't
13 even begin to understand where they're getting
14 that from.

15 If you look at the cumulative impact
16 modeling that shows what the end result will be,
17 we will be at what, 300-something percent of the
18 standard, three times the standard. Let me look
19 it up, so I can give it to you right. It's on
20 PM10, and it's the 24-hour period. And it's 312
21 percent of the standard.

22 The standard, itself, is outrageous.
23 But to be at 312 percent of the standard means
24 that you are literally killing people on a regular
25 basis and you're causing people to have heart

1 disease and lung disease and high morbidity rates
2 already. And --

3 HEARING OFFICER GEFTER: Okay, I just
4 want to ask you, are you referring to table 16 in
5 the applicant's testimony?

6 MS. HOAG: I'm referring to the
7 cumulative air quality impact report that was done
8 by the consultant for the thing, and I'm sorry, I
9 don't know what --

10 HEARING OFFICER GEFTER: All right,
11 well, in --

12 MS. HOAG: -- what table or whatever.

13 HEARING OFFICER GEFTER: Okay, in table
14 16 of the applicant's testimony which is exhibit
15 169, it indicates the percent of standard, and it
16 says 310 percent. So that's the table I have --

17 MS. HOAG: 310?

18 HEARING OFFICER GEFTER: -- before me.

19 MS. HOAG: Okay, that's not the one I'm
20 looking at, then, because it was 312. I got it
21 from this gentleman here.

22 Thank you. It's table 23 of the final
23 staff assessment. And I'd like to point out that
24 this PM10, PM2.5 is much more deadly and of much
25 more concern. And yet even on PM10 we would be at

1 300 percent. And power plants put out almost 100
2 percent PM2.5, which I'm sure you're aware.

3 When I was on the board a health officer
4 came and gave us a slide show demonstration on
5 PM2.5 and talked about how the standard was
6 created and what went into it, et cetera. The
7 current standard for PM10 -- or, well, we might be
8 confused with PM2.5, but I think it's PM10, is 65,
9 is that correct, 65 mcg/cubic meter on the 24-
10 hour --

11 UNIDENTIFIED SPEAKER: Federal standard?

12 MS. HOAG: -- federal standard, okay.
13 And she said that the Seattle area, when they did
14 some epidemiological studies and things like that,
15 and looked at the thousands of studies that had
16 been done nationwide and internationally, they
17 said that it should not be any higher than 25.
18 And they said even at 25 they had recommended 25
19 just because they felt that the point at which it
20 caused significant health impacts was too hard to
21 attain.

22 And so they were recommending 25.
23 That's not where it ended up at the federal level
24 because of politics; not because of health.

25 So when you're looking at having such a

1 huge violation and the existing -- some existing
2 background right now on PM10 on the 24-hour is
3 150. That is so so far out of line. We should be
4 doing absolutely everything we can to bring that
5 number down.

6 And the problem is that when you have a
7 project like this that says, well, we're going to
8 have offsets so that our plant doesn't have an
9 impact, it absolutely has an impact. Because it's
10 going to take away those things that you could fix
11 to help to begin to bring that number down. It's
12 having a very negative impact.

13 And in addition to that, it's having an
14 even greater impact on the mobile area, because
15 these offsets aren't anywhere close to here. And
16 so you're going to have a huge local impact.
17 You're going to have some offsets somewhere else.

18 One of the questions from the Commission
19 here to the gentleman here was did he agree with
20 this particular paragraph regarding the formation
21 of secondary particulate ammonium nitrate. And I
22 do not agree at all with that. I've had a lot of
23 background in that particular thing.

24 The problem is this plant will be
25 producing those very precursors at the very same

1 location. And so the ammonia that you're
2 producing is going to have a NOx right there, the
3 VOCs right there, along with the background stuff
4 that's there. And those will be traveling
5 together in the air over time and with temperature
6 to produce those particulates.

7 Having an offset in, what, Union City,
8 Fremont, whatever, Los Gatos and Oakland, that's
9 going to be where those precursors are. Not here.
10 Yes, it will eventually reduce the amount of those
11 precursors in the background air, but you're
12 producing them right here out of the same smoke
13 stack. So you're going to have everything you
14 need to get your chemical reaction right here. So
15 I could not disagree more. They're ignoring the
16 chemistry of the items involved.

17 I asked the local air authority how our
18 valley compared with the rest of California. On
19 PM2.5 we're second only to L.A. On our ozone
20 levels we're the second worst in the state, the
21 third worst in the nation. I asked them do the
22 limits that are proposed in AQ-28 and 29 reflect
23 the other large plant being up and running. Are
24 they figuring it into it. The answer was no.

25 On the cumulative air quality impact

1 report the NO2, if you look at the background, and
2 this is once again the same table 23, the
3 background on it is 149 for the one-hour NO2. The
4 cumulative impact is 140.2. You're almost
5 doubling it.

6 What some of the testimony has been, and
7 what the air agency person told me was that in
8 this area you're ammonia rich. And the governing
9 factor on whether or not you end up with ammonium
10 nitrate is the amount of NOx that you've got.
11 Because you've already got all the ammonia you
12 need.

13 Well, now you're going to be doubling,
14 almost doubling, your NOx. You're going to have a
15 huge problem.

16 I apologize, I'm just -- I had a
17 question about on one of the tables -- I'm trying
18 to find where I wrote what the table was -- on one
19 of the tables it talks about the amount of
20 particulate matter that would be produced by the
21 cooling tower. Please let me find my notes on
22 that because it's important.

23 HEARING OFFICER GEFTER: While you're
24 searching we can go off the record for a minute.

25 (Off the record.)

1 MS. HOAG: Okay. Regarding the PM that
2 was produced by the cooling towers, and I lost
3 them again. Where is it? Here it is. Table 5
4 shows 6.10 tons per year of PM10 coming from the
5 cooling towers, and I wanted to know does any of
6 that include anti-corrosives. I guess I can't get
7 an answer.

8 San Joaquin County does not allow
9 chromium-6 in the cooling towers, but San Joaquin
10 County doesn't have discretion here. And I wanted
11 to know does the Air District that has
12 jurisdiction prohibit chromium-6.

13 HEARING OFFICER GEFTER: When we get to
14 the public health testimony the staff witness can
15 address those questions, I hope.

16 MS. HOAG: Okay. Regarding PM2.5 and
17 health, there is a study done in Boston, I believe
18 it was Johns Hopkins University, and it was backed
19 up by thousands of other epidemiological studies.
20 But the Boston study was particularly interesting
21 because they interviewed all these heart attack
22 victims, and they found out that each of them had
23 had their heart attack when the PM2.5 level went
24 up, every single one of them. And yet that PM2.5
25 level did not even reach the level of the

1 standard.

2 There is a very direct correlation
3 between PM2.5 and lung and heart disease. And
4 there's testimony on the record which if there's
5 any way I could submit it to the Commission I
6 would really appreciate it. It's from Dr. Jane
7 Koenig, who is the leading PM2.5 on health
8 researcher in the nation. And she has sworn
9 testimony that she submitted regarding the impacts
10 of the plant in Washington.

11 And she said that on children and the
12 elderly there are documented health impacts at 11
13 mcg/cubic meter. And we already have 150 here.
14 What we have here is something that is so
15 desperate to get fixed. And if you approve a
16 plant that removes offsets in the area and then
17 adds more stuff to the area, we're going in
18 exactly the opposite direction of where we need to
19 go.

20 We've also given a lot of testimony
21 regarding how PM2.5 works. You can't keep it out
22 of your house. They've done studies, they
23 compared the levels inside the house compared to
24 outside the house; they were the same. It moves
25 as a gas. It's the same thing when you breathe it

1 in; it gets past all of your natural defenses and
2 passes as a gas right into your blood.

3 The other thing that I wanted to say is
4 that in my position there I had the pleasure of
5 working with Canadian counterparts. And they do
6 not accept offsets at all. For the very reason
7 that it removes the easy fixes that they need to
8 solve the air quality problems and to address air
9 quality in the future as they have growth. And so
10 they absolutely will not accept offsets.

11 And also regarding offsets, when I
12 glanced at the list of what was proposed, what's
13 coming out of this plant -- with particulate
14 matter it doesn't just matter that it's a little
15 particle. It matters what it is. And what's
16 coming out of this plant is toxic. And if you
17 look at what they're proposing to mitigate it
18 with, there's a couple of very small PM10
19 mitigations, that first of all, you know, I don't
20 agree with it in the first place because it's way
21 over there, but even if you want to say it's going
22 to have an effect, there's a couple of very small
23 combustion ones that would be comparable.

24 The majority of what they're proposing
25 is bare dirt. It's not the same thing at all.

1 It's not going to have the same thing, it's not
2 going to have the same effect on public health.
3 And I heard the gentleman here say the plant was
4 fully mitigated. And I've heard that term before.
5 It's usually only referring to criteria
6 pollutants. And I want to know what about the
7 toxins.

8 Because usually from a power plant
9 burning natural gas there's a list of about 13 to
10 15 toxins. I've never seen any of them mitigated
11 yet. And if you've got your huge plant and the
12 other guy's huge plant and they're all dumping
13 every single day on this community, you're going
14 to have the highest cancer rates in the nation;
15 you're going to have the highest birth deformities
16 in the nation; you're going to have the highest
17 health problems in the nation.

18 You need to be looking at apples and
19 apples, not apples and oranges. And I'm just
20 going to quit there. Thank you very much.

21 HEARING OFFICER GEFTER: Thank you. And
22 when you get a chance, why don't you have a
23 conversation with Dr. Greenberg, who's going to be
24 testifying in a little while about some of the air
25 issues that you raised regarding toxic air

1 contaminants.

2 MS. HOAG: Great, thank you.

3 HEARING OFFICER GEFTER: He will be
4 testifying pretty soon.

5 MS. HOAG: Oh, can I say one more thing?
6 When you mentioned the health thing, I kept
7 hearing ammonium nitrate discussed. But one of
8 the things we're very concerned about was just
9 plain ammonia, because it's corrosive to the
10 lungs; it's got a negative impact on health. And
11 so you can't just say, well, there's ammonia being
12 produced, but it's not ammonium nitrate so it's
13 not a big deal, or it's not forming ammonium
14 nitrate.

15 SCONOx is some technology that we looked
16 into before that not only reduced NOx, but it also
17 reduced carbon monoxide. It was a better
18 technology. And plant after plant after plant,
19 the only reason it wasn't employed was because
20 they said that nobody their size had done it
21 before. Well, guess what? Nobody their size will
22 ever do it until it's required of them.

23 HEARING OFFICER GEFTER: Thank you.

24 Mrs. Sarvey.

25 MS. SARVEY: Susan Sarvey. The most

1 disturbing thing that I heard this afternoon was
2 when Mr. Brewster left me feeling like stabbed,
3 adjust the numbers to fit siting a plant. That
4 was like really scary to hear.

5 The comments that came out in regards to
6 the final PMPD with East Altamont, which I was
7 familiar with, which I thought were disturbing.
8 The concern was being too punitive, I mean I just
9 don't understand this. We're not here to be good
10 or bad to the applicant. We're here to decide
11 what is real and what to do about it.

12 And so these adjusted numbers, the way
13 they float them around and change them, is really
14 scary. And for him to say , well, you know, in
15 those other three cases that you just talked
16 about, well, I don't disagree with staff, but, you
17 know, it's different. It isn't different. We're
18 talking about the same thing, the same numbers.
19 We're talking about a different town. And in my
20 case I got a sucky town that's not going to go
21 away. So he needs to be taking the worst case.
22 So that was just really disturbing to me.

23 But here's my comments. In the Tracy
24 Peaker Plant it was established that we live in an
25 ammonia-rich area, so we must do everything we can

1 not to add to the high ammonia numbers since it
2 creates secondary particulate. Two ppm ammonia
3 slip is a must, due to our high particulate levels
4 and how particulate exacerbates asthma and
5 respiratory illness.

6 Two ppm is used in the United States now
7 effectively. There is no reason it cannot happen
8 in California where we need it so desperately.

9 We must also look at ways to control
10 spore dispersal during construction to prevent a
11 widespread outbreak of Valley fever, especially
12 among the workers and the children attending
13 Mountainhouse schools. We need the applicant to
14 do everything they can voluntarily to protect the
15 children at Mountainhouse school, which again I
16 must say, the solar panels so the kids can play
17 indoors during construction to protect them from
18 the floating spores, the PM2.5, the PM10. And I
19 just don't see any other way to do that.

20 And the school districts are broke and
21 cannot afford to pay their PG&E bills, so you've
22 got to give them a way to turn on the lights, turn
23 on the air, turn on the heat. You cannot expect
24 school officials and parents to know the health
25 risks to their children from breathing PM2.5, PM10

1 and loose spores floating around in the air due to
2 their construction.

3 Just because Tesla is coming you cannot
4 expect a general population to become air quality
5 experts overnight. You must protect the public by
6 requiring the 2 ppm ammonia slip and dry cooling
7 until biological testing, monitoring and protocols
8 are available to protect us when there is a
9 problem, to find a problem, and to know what to do
10 about the problem.

11 In relation to the air quality situation
12 that I mentioned at the beginning, in relation to
13 Mr. Brewster's testimony that was so alarming, I
14 do want you to know that Tuan Ngo is the only
15 staff member -- I have been involved in three
16 siting cases now -- he is the only staff member
17 who adequately tried to answer my concerns and
18 questions.

19 When I asked for a cumulative study he
20 did those isoplex, and he tried to explain to me
21 what the deal was. And he tried to reassure me
22 and tell me what the things that could be done to
23 address the problems that came with that.

24 And I just don't understand why he is
25 the only staff member who ever has reached out to

1 me in any category and tried to explain to me in
2 plain English the answer to my question. Much
3 like she said, oh, I guess you're not going to
4 answer my question. And when I read the public
5 comment answers in the book, some of those answers
6 that are in that book do not even pertain to what
7 the question was. Ms. Garamendi talked about
8 water at length and it said refer to soil and
9 land. What the heck does soil and land have to do
10 with water? Nothing.

11 My issues were never answered in a
12 straightforward, understandable, plain English
13 manner. I really hope that you send Mr. Brewster
14 back to work; you tell him he needs to do a new
15 cumulative study, not one that makes it so he can
16 build his plant, or doesn't make him build his
17 plant, but one that tells the truth.

18 The modeling for the new, enlarged glass
19 plant that we have; one that includes East
20 Altamont; one that includes all the mobile
21 sources; one that includes everything that we've
22 talked about here today, that we've moved the
23 numbers around so it's convenient for this
24 proceeding. That does not protect the public
25 health.

1 And your job, sitting up there, is not
2 to site his plant; your job is to listen to his
3 proposal, listen to what they have to say about
4 it; hear our concerns and figure out if it's do-
5 able safely for the public. It's not to make it
6 so we can have a power plant so we can plug in the
7 toaster. If ya can't breathe ya can't eat, you're
8 buried.

9 Thank you.

10 HEARING OFFICER GEFTER: Anyone else on
11 air quality? Okay, we're going to close the topic
12 of air quality and we will discuss applicant's
13 comments later during the public conference on the
14 PMPD.

15 So we have one more topic, which is
16 public health. Mr. Birdsall, you're excused, and,
17 Mr. Stein, you're excused. We would like you to
18 stay this afternoon, though, when we have public
19 comment.

20 And, Mr. Stein, is your witness --

21 MR. GALATI: I have no witness on public
22 health.

23 HEARING OFFICER GEFTER: Okay. So, it's
24 up to staff now to do our public health section,
25 and --

1 MR. KRAMER: Okay, --

2 HEARING OFFICER GEFTER: -- Dr.

3 Greenberg was previously sworn and will testify
4 under oath.

5 Whereupon,

6 ALVIN GREENBERG

7 was recalled as a witness herein, and having been
8 previously duly sworn, was examined and testified
9 further as follows:

10 MR. KRAMER: Yes. He won't go over all
11 of his testimony, but a couple questions came up I
12 think he should address. Although actually the
13 people who asked about them aren't here.

14 HEARING OFFICER GEFTER: Okay, well, you
15 could still put them on the record. And --

16 MR. KRAMER: Okay. One was what I'd
17 call a division of labor between who regulates
18 criteria pollutants, or how they're discussed in
19 our analysis. And all the other issues, the so-
20 called toxics.

21 DIRECT EXAMINATION

22 BY MR. KRAMER:

23 Q So, Dr. Greenberg, could you explain
24 where the different elements of the emissions from
25 the plant are analyzed and discussed in the

1 staff's assessment?

2 A I'd be happy to. Air quality is an
3 issue area that addresses what we call the
4 criteria pollutants. These are oxides of
5 nitrogen, sulfur, carbon monoxide, particulate
6 matter. And these have national and state ambient
7 air quality standards.

8 The toxic air contaminants that were the
9 subject of a question or rather of concern by a
10 member of the public are addressed in the public
11 health section. There are no national or state
12 ambient air quality standards for toxic air
13 contaminants. Rather that we consider them not
14 individually, but rather in an additive manner in
15 a human health risk assessment.

16 And so they are addressed by the
17 applicant in a risk assessment that is prepared
18 according to U.S. and California EPA criteria.
19 Staff reviews and evaluates that health risk
20 assessment and arrives at any decision based upon
21 what we consider to be significant or
22 insignificant risk; or whether or not there is a
23 hazard associated with noncancer impacts.

24 Q Okay, and did you find any significant
25 risks or hazards with this project?

1 A No, not even, you know, given the
2 conservative nature of the health risk assessment
3 process, where the risks are usually over-
4 estimated by a significant level, sometimes a
5 couple of orders of magnitude over what the real
6 or true risk might be.

7 But we do this over-estimation so that
8 we have a level playing field, everybody follows
9 the same protocol. What I mean by everybody, I
10 mean every power plant or every emission source,
11 regardless of whether it's a power plant or not,
12 in the State of California all follow the same
13 protocol.

14 That way we can compare one source with
15 another source and nobody can say, oh, well, they
16 assessed it differently. Everybody assesses it
17 the same way, using the same assumptions, using
18 the same EPA-approved air dispersion models, and
19 using the same exposure assessment assumptions,
20 and California EPA toxicity values, which are, for
21 the most part, more conservative. That is, more
22 health protective than USEPA toxicity values.

23 And what the applicant's risk assessment
24 found, and I reviewed and evaluated that risk
25 assessment and I concur with its findings, was

1 that the risk of contracting cancer is below what
2 California considers to be a significant risk.
3 And the chances of getting noncancer impacts are
4 zero because they're below the regulatory levels,
5 what we call threshold levels, of impact for those
6 noncarcinogens.

7 Q What is that cancer level? You didn't
8 give the level, itself.

9 A The level is a lifetime risk of ten
10 excess cancers in a million persons exposed.

11 Q The model, if I understand correctly,
12 assumes that those persons have lived their whole
13 70-year life in a particular place?

14 A Yes. They would be living every minute
15 of every -- every second of every minute of every
16 day for 70 years at the location that the air
17 dispersion model predicts would be the maximum
18 airborne concentrations.

19 Q And does anybody --

20 HEARING OFFICER GEFTER: Mr. Kramer, let
21 me interrupt. All of this is discussed in the
22 final staff assessment; it's also reiterated in
23 the Presiding Member's Proposed Decision --

24 MR. KRAMER: Okay.

25 HEARING OFFICER GEFTER: -- and if the

1 public comment on -- the person who had questions
2 on these topics can talk to Dr. Greenberg off the
3 record, because we really want to address the
4 issues that are contained in exhibit 128 today.

5 MR. KRAMER: Okay, I think I have one
6 more question that probably wasn't discussed in
7 the staff assessment.

8 BY MR. KRAMER:

9 Q Does the concept of offsets apply to the
10 toxics that you examined in the public health
11 analysis?

12 A No.

13 Q Thank you.

14 HEARING OFFICER GEFTER: Do you have any
15 direct on the exhibit 128?

16 MR. KRAMER: We'll just offer it by his
17 declaration. That would be the quickest way.

18 HEARING OFFICER GEFTER: Okay. Does
19 applicant have any cross-examination?

20 MR. GALATI: No cross-examination.

21 HEARING OFFICER GEFTER: Okay. Mr. Boyd
22 had a question.

23 CROSS-EXAMINATION

24 BY MR. BOYD:

25 Q Page 16, --

1 MR. KRAMER: Sorry, we can barely hear
2 you.

3 BY MR. BOYD:

4 Q It's under the first -- is it prions or
5 prions? How do you say it?

6 A Prions.

7 Q Prions, that's what I thought, okay. At
8 the top paragraph here you're saying -- you're
9 talking about inactivation of prions. You say
10 despite the stability and resistance to routine
11 disinfection medicines, prions can be destroyed by
12 the application of preprotein denaturing, organic
13 solvents such as phenol and alkali such as sodium
14 hydroxide. They are inactivated by one more,
15 sodium hydroxide, sodium hydrochloride 2 percent,
16 3, concentration -- and steam autoclaving at 132
17 degrees C. for four and a half hours.

18 My question is do you know what the
19 normal operating temperature of the combined cycle
20 power plant of this type is in normal operating
21 conditions, what the temperature is?

22 A No. I'm sure the applicant does.

23 Q Would it surprise you that it's lower
24 than 132 degrees C?

25 MR. GALATI: Objection, he said he

1 didn't know.

2 HEARING OFFICER GEFTER: Yeah, objection
3 sustained.

4 MR. BOYD: Okay.

5 BY MR. BOYD:

6 Q So since you don't know, based on the
7 lack of knowledge of what the operating
8 temperature is, is it possible, based on this 132
9 degrees C temperature you've identified, to
10 determine whether or not the project, as proposed,
11 using recycled water, will be able to inactivate
12 any prions present?

13 A I think I'm hung up on your word, the
14 project, because if you want to include the
15 treatment at the Tracy wastewater treatment plant
16 providing tertiary treated water or secondary
17 treated water and then the plant providing another
18 step for tertiary treatment, and disinfection, and
19 the halogen that would be added as part of a
20 biocide program to the cooling tower, if that is
21 considered the project, then my considered
22 opinion, after reviewing all the information on
23 prions is that it's doubtful that there would be
24 any prions present in that water.

25 And if they were, it would be of such

1 low concentration that it would not pose a
2 significant risk.

3 And finally, there is absolutely no
4 evidence that prions can be transmitted via any
5 other exposure route except ingestion of either
6 infected nervous tissue of animals or by human
7 cannibalism.

8 So, --

9 Q Your study was, in fact, you analysis
10 was based on secondary treated effluent, wasn't
11 it?

12 A The question originally asked was --

13 Q Yeah, no, I understand. I'm trying to
14 make sure that we're asking the same thing. Based
15 on the analysis --

16 A But my analysis on the prion section,
17 which was added sort of separately, based upon a
18 request for further clarification made at the
19 September 18, 2003 hearing, --

20 Q Right.

21 A -- was based on all the treatment that
22 would be provided. It has to be tertiary treated
23 water in order to be used in a cooling tower in
24 the State of California.

25 Q Okay. So, I guess that's the best I'm

1 going to get. Thank you.

2 HEARING OFFICER GEFTER: Do you have any
3 other questions?

4 MR. BOYD: No, that's it.

5 HEARING OFFICER GEFTER: Okay. Mr.
6 Sarvey.

7 DR. GREENBERG: Okay, Mr. Boyd, thank
8 you.

9 CROSS-EXAMINATION

10 BY MR. SARVEY:

11 Q I only got one question now because we
12 only got 15 minutes.

13 (Laughter.)

14 UNIDENTIFIED SPEAKER: Make it a yes or
15 no answer, then.

16 BY MR. SARVEY:

17 Q This is our third hearing and you've
18 heard me rant and rave about all these EIRs I got
19 up here, and all these projects are not included
20 in the cumulative analysis.

21 Now, in your health risk assessment do
22 you include all the toxic air contaminants that
23 are coming from all these new projects in
24 conjunction with the Tesla Power Plant? Yes or
25 no.

1 A Yes.

2 Q You do?

3 A Yes.

4 Q You do a cumulative assessment of all
5 the toxics from these projects in these EIRs and
6 whatever?

7 A Yes. And --

8 Q Okay, thank you.

9 PRESIDING MEMBER GEESMAN: That was
10 three questions.

11 (Laughter.)

12 HEARING OFFICER GEFTER: Three answers.

13 PRESIDING MEMBER GEESMAN: But they were
14 quick.

15 HEARING OFFICER GEFTER: All right.

16 MR. SARVEY: I'm done.

17 HEARING OFFICER GEFTER: Okay.

18 EXAMINATION

19 HEARING OFFICER GEFTER: On page 12 of
20 your testimony, exhibit 128, you indicate that the
21 cooling water will also be treated at the power
22 plant site with additives to guard against
23 corrosion and biofouling. And I think there was a
24 public comment questioning that.

25 First of all, I hadn't heard from staff

1 about the water treatment and what's going to
2 occur at the plant, since the project will be de-
3 nitrified apparently at Tracy.

4 So what other chemicals for corrosive
5 treatment will be at the plant, and how does that
6 impact in terms of emissions?

7 DR. GREENBERG: The other chemicals that
8 are used in water treatment at the facility are
9 described actually in the hazardous materials
10 management section. And this is nothing new at
11 this facility as compared to other facilities.

12 And they do include -- excuse me, the
13 word I'm looking for is halogen, sorry, had a
14 senior moment -- halogens, in this case
15 hypochlorite for biocide activity. There will be
16 anticorrosive agents. There are some antifouling
17 biofouling agents. And just to set your mind at
18 ease, there will be no hexavalent chromium used.
19 There hasn't been hexavalent chromium used in a
20 cooling tower in California in probably 15 or 20
21 years.

22 HEARING OFFICER GEFTER: And then I
23 think you indicated that you had analyzed cooling
24 tower emissions at a power plant recently over a
25 two-day period.

1 DR. GREENBERG: Yes.

2 HEARING OFFICER GEFTER: Where was that
3 located?

4 DR. GREENBERG: It was located somewhere
5 in the southwest United States. We have not --

6 HEARING OFFICER GEFTER: All right; not
7 in California?

8 DR. GREENBERG: Yes, it was in
9 California. We're not prepared to divulge the
10 identity just yet; probably next week --

11 HEARING OFFICER GEFTER: All right.

12 DR. GREENBERG: -- we'll be able to. I
13 hope you understand that.

14 HEARING OFFICER GEFTER: And then I
15 think the question that has been sort of the
16 undercurrent of all the questions from the public
17 regarding your risk analysis is whether or not
18 you're using precautionary principle in your risk
19 analysis assessment.

20 DR. GREENBERG: I would say yes. It's
21 not a stated policy. I'm not given a directive to
22 use the precautionary principle. I would state,
23 however, that that is a de facto use, our
24 approach. Our approach is one of several layers
25 of conservatism.

1 We're not even, in this case, taking
2 into account the detriment or the health risk to
3 safety of not building the power plant and putting
4 Californians at risk for power shortages and
5 blackouts, which could indeed result in some
6 significant risks. So, we're not balancing out
7 our precautionary principle by looking at that
8 side of the coin.

9 But all of the analysis that I do, as a
10 toxicologist, in looking at whether it be
11 emissions from a cooling tower, emissions from the
12 stack, or even hazardous materials use is from a
13 very cautious point of view. And more stringent
14 health protective levels are used here in
15 California than in other states.

16 HEARING OFFICER GEFTER: But, of course,
17 you analysis is based on the existing standards by
18 the regulatory agencies?

19 DR. GREENBERG: That is correct. The
20 analysis is based on existing standards.

21 HEARING OFFICER GEFTER: Okay, what
22 we'll do is if there's anyone who would like to
23 make public comment right now on public health,
24 we'll take those public comments.

25 State your name again, please.

1 MS. HOAG: Thank you. It's Connie Hoag.
2 And I have a bunch of questions written down. I
3 understand I can't do it that way. And so I'll
4 try to rephrase them as something else, just for
5 the record, to show that I've got some concerns
6 about some of the statements that were just made.

7 One of the things was -- it's hard to
8 put it in a statement -- possibly the standards
9 and regulations that you used to conduct your
10 analysis complete with recent epidemiological
11 studies. And possibly no power plant has ever
12 been found to present a health risk in recent
13 years, yet downwinders show health symptoms.

14 The environment in Canada, which has
15 stricter regulations than in the United States,
16 recently published a document stating that current
17 regulations are not adequately protecting public
18 health and are lowering their regulations and
19 standards even lower.

20 I find it very difficult to believe that
21 a 660 megawatt plant with the same technologies
22 used, and bringing things down to the same parts
23 per million, et cetera, et cetera, would cause two
24 deaths per year and increased morbidity rates in
25 the tens of thousands, but yet this plant would

1 cause no health problem.

2 And I wondered what modeling was used to
3 determine what the individual impacts were on a
4 particular individual in a particular environment.

5 And I also am concerned that a subject
6 that is exposed to multiple toxins has an
7 exponential impact from those toxins, as opposed
8 to single toxins. And it's a little hard because
9 I can't ask questions. I'm concerned whether or
10 not that is taken into account, because of the
11 proximity of the number of power plants and the
12 amount of toxins in the area.

13 Thank you.

14 HEARING OFFICER GEFTER: Thank you. Do
15 you have a comment on public health? Mrs. Sarvey.

16 MS. SARVEY: Susan Sarvey. I asked Mr.
17 Swaney about the biological thing because BAAQMD
18 said they don't monitor for that. And he feels in
19 this situation that probably it would be the
20 Department of Public Health that would have to
21 look into this.

22 Does anybody have any knowledge? Do
23 they have any knowledge of how to monitor and
24 check for this? And what kind of --

25 HEARING OFFICER GEFTER: What are you

1 referring to, to be monitored?

2 MS. SARVEY: The recycled water. And if
3 there's a biological thing coming out of the
4 cooling tower because it didn't burn all up.

5 So if it's the Department of Public
6 Health that has to deal with it, is there any --
7 does Mr. Greenberg know, is there any historical
8 evidence that they even know how to test for this
9 and monitor for this and protect us from this?
10 Because I've never heard about the Department of
11 Public Health dealing with an issue like that,
12 coming out of a cooling tower.

13 I'm just wondering, are they area that
14 they're supposed to monitor that?

15 HEARING OFFICER GEFTER: Okay. And do
16 you have other questions, because we'll ask Dr.
17 Greenberg to address --

18 MS. SARVEY: And then I would just ask
19 again, if we live here and we have existing asthma
20 and respiratory issues, if there was a release
21 like that, what would -- how would that affect me?
22 Am I going to recover from that? And I base this
23 on in the last week me and five other people that
24 I know, we have gotten infections and hives, and
25 we've all been told by five different physicians

1 at five different medical groups that it's due to
2 contaminate airborne particulate that's in the
3 air.

4 And so I have a lot of concerns about
5 what is in the air. And if there's going to be
6 more than one agency responsible for monitoring
7 what's floating around in our air, how are we
8 going to coordinate all this and keep it together?
9 Because like she said, it's three plants at one
10 time, not a good scenario.

11 HEARING OFFICER GEFTER: Okay, Dr.
12 Greenberg, hearing the public comment on your
13 topic of public health, can you address some of
14 the issues that were raised, in the next few
15 minutes?

16 DR. GREENBERG: Certainly, Hearing
17 Officer Gefter. Mrs. Sarvey has brought up the
18 issue of biological, perhaps she was referring to
19 Legionella coming from cooling towers.

20 I am not surprised that the Bay Area Air
21 Quality Management District told her that they
22 don't know anything about that, and they don't
23 regulate that. Because they are not the
24 appropriate agency and they have no regulatory
25 responsibility in that area.

1 There would be two agencies in
2 California, perhaps three, that would have some
3 regulatory responsibility. The first, when it
4 comes to a cooling tower from a power plant, would
5 be the California Energy Commission. And we are,
6 indeed, addressing that issue.

7 She is right to bring that up as a
8 concern. We have brought that up several times in
9 evidentiary hearings, and the California Energy
10 Commissioners have, indeed, adopted a condition of
11 certification, Public Health-1, for a number of
12 power plants in the state, where they will have to
13 provide proof to us in the form of a biocide
14 program to address the issue of Legionella.

15 As a matter of fact, we do review those
16 biocide programs. And just two weeks ago I
17 rejected one and sent it back. We expect to get
18 an approved program that meets our criteria and
19 will be protective of the public.

20 The second agency would be the
21 California Department of Health Services, which
22 does have a regulation in Title 22. And that's
23 all listed in the staff assessment under LORS.

24 The third agency delegated to protect
25 the workers of California, and that's Cal-OSHA.

1 And then, of course, there's federal OSHA. There
2 are no OSHA regulations regarding Legionella
3 exposure from cooling towers. However, federal
4 OSHA has published a guideline; it's not a
5 regulation, it's a guideline. However, under the
6 general duty clause of the federal OSHA Act, as
7 well as section 3200 of the California General
8 Industry Safety Orders, Cal-OSHA and federal OSHA
9 can enforce worker protection from Legionella, or
10 potential exposure to Legionella from cooling
11 towers.

12 It's a real issue. There have been
13 documented outbreaks of Legionella coming from
14 industrial cooling towers. And we feel that this
15 condition of certification Public Health-1 will
16 protect the workers and the public from that risk
17 and reduce it to an insignificant risk.

18 HEARING OFFICER GEFTER: And with regard
19 to other questions about the health risk
20 assessment and the modeling that was done, perhaps
21 you can just point to the staff assessment and
22 also to the applicant's filings on, you know, the
23 basis on which those health risk assessments were
24 done.

25 MS. SARVEY: Can I ask my last question?

1 HEARING OFFICER GEFTER: Just a minute.

2 I'm talking. Just wait, okay?

3 DR. GREENBERG: Forgive me for not
4 remembering the page of the staff assessment, but
5 we did do a thorough review and analysis. There
6 is a complete table listing some 20- to 30-odd
7 toxic air contaminants there, and what the
8 individual risks, and then what the additive risk
9 would be.

10 HEARING OFFICER GEFTER: Yes, I'm
11 familiar with that. I just wanted to alert you
12 that perhaps you can --

13 DR. GREENBERG: Right.

14 HEARING OFFICER GEFTER: -- speak with
15 the people who have those concerns after the
16 meeting, after the hearing this afternoon.

17 DR. GREENBERG: Mrs. Sarvey did ask a
18 question or made a statement about the impacts of
19 exposure to mixtures of more than one substance.
20 I think she used the term multiplicative.

21 And I do address that in my response to
22 your first concern regarding the potential for
23 synergistic effects. And so that's in the record,
24 also.

25 HEARING OFFICER GEFTER: Okay, thank

1 you. Mrs. Sarvey, you have one more question?

2 Also, I understand that Intervenor Bob Sarvey also
3 would like to make a public comment. We're going
4 to hold your public comment till after 6:00, Mr.
5 Sarvey, and then we'll hear from you then.

6 MS. SARVEY: I'm relieved that he's
7 talking about who's responsible to do this, but
8 I'm not understanding if we know who's responsible
9 to do this, how come these people aren't here
10 talking to us about how they're going to do it,
11 when everybody else came and talked to us about
12 biology, air quality, everything.

13 I think this monitoring and the people
14 in public health, it's critical that they come and
15 talk to us so that we all are on the same page
16 about who's doing what job, and what we're doing.
17 And, if you're just going to close the hearing and
18 we're not going to hear from those people, I would
19 ask in the future that they definitely be called
20 to testify --

21 PRESIDING MEMBER GEESMAN: I think we
22 had a compliance section in one of our earlier
23 hearings, and --

24 MS. SARVEY: And the public health
25 people came and said how they were going to do it?

1 PRESIDING MEMBER GEESMAN: I believe
2 that all of that is in the record.

3 MS. SARVEY: Okay, because maybe I just
4 didn't read the right part. I didn't see where
5 the Health Department explained how they were
6 going to monitor the --

7 PRESIDING MEMBER GEESMAN: Well, I think
8 Dr. Greenberg said that we have the primary
9 responsibility.

10 MS. SARVEY: So who, from the Energy
11 Commission, is going to do that?

12 PRESIDING MEMBER GEESMAN: Our --

13 HEARING OFFICER GEFTER: Compliance, we
14 have a representative from the compliance unit
15 here today, and you can speak with her as soon as
16 we go off the record.

17 MS. SARVEY: Okay, okay. And so maybe
18 she should testify next time is what I'm saying.
19 Thank you.

20 DR. GREENBERG: Hearing Officer Gefter,
21 as I testified, compliance does ask me to review
22 these plans. And I just rejected one, and --

23 HEARING OFFICER GEFTER: Right, and --

24 DR. GREENBERG: -- so we do do our job.

25 MS. HOAG: Pardon me, but could I ask a

1 quick question? The testimony that I referred to
2 before from Dr. Jane Koenig, how can I get it on
3 the record? Because it doesn't agree at all with
4 what your health officers say.

5 HEARING OFFICER GEFTER: Yes, tomorrow
6 by 5:00 p.m. written comments can be submitted on
7 the PMPD. And if you want to, fax it to us or
8 somehow, you know, --

9 MS. HOAG: Or email or something like
10 that?

11 HEARING OFFICER GEFTER: -- email it to
12 us --

13 MS. HOAG: That would be great.

14 HEARING OFFICER GEFTER: -- and the
15 Public Adviser can give you the information on how
16 to get it to us. But by 5:00 p.m. tomorrow
17 afternoon.

18 MS. HOAG: Great, thank you.

19 HEARING OFFICER GEFTER: Thank you.
20 Okay, at this point we're going to close the
21 evidentiary hearing; the topic of public health is
22 closed.

23 We're going to take a recess now until
24 6:00 p.m., and then we're going to reconvene and
25 take public comment on the PMPD.

1 Off the record.

2 (Whereupon, at 5:04 p.m., the hearing
3 was adjourned. Committee Conference to
4 convene at 6:00 p.m., this same day.)

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1 EVENING SESSION

2 6:15 p.m.

3 PRESIDING MEMBER GEESMAN: For members
4 of the public that weren't here earlier, I'm John
5 Geesman, the Presiding Member of the Committee of
6 the California Energy Commission assigned to the
7 Tesla Power Plant application. Commissioner
8 Rosenfeld, who is the Associate Member, is unable
9 to join us. To my left is Susan Gefter, the
10 Hearing Officer who conducted our hearing today
11 and will conduct the public session tonight.

12 We've got some administrative matters
13 and evidentiary matters -- or rather I should say
14 editorial matters -- to take up with the applicant
15 and the staff in terms of their comments on the
16 proposed decision.

17 But the primary purpose of tonight's
18 session is public comment. So we will get to that
19 as quickly as we can. And I'll turn everything
20 else over to Ms. Gefter.

21 HEARING OFFICER GEFTER: All right. And
22 we're going to apologize for the kind of crowded
23 room. It's just we had to move from the larger
24 room to the smaller room this evening because the
25 other room was reserved. So there are some seats

1 in the front if anyone wants to move up.

2 Before we go to public comment we are
3 going to discuss the comments filed by the
4 applicant and staff on the Presiding Member's
5 Proposed Decision.

6 The first thing I'm going to ask the
7 staff and the applicant is whether they have any
8 disagreement with each other's comments. And if
9 so, what they are. Because then we can focus on
10 those issues.

11 And we'll start with applicant. Do you
12 have any concerns or comments on the information
13 filed by staff?

14 MR. GALATI: No, we don't have any
15 comments on what staff filed, other than I'd like
16 to point out to the Committee that we made a
17 comment on public health, specifically public
18 health-1. It looks like Dr. Greenberg has
19 addressed that in their comments, and so we agree
20 with specifically that portion of that's how
21 public health-1 should be constructed.

22 HEARING OFFICER GEFTER: And staff
23 specifically requested that requirement three of
24 the condition public health-1 be deleted. That's
25 one of the things that staff is agreeing with you

1 on.

2 MR. GALATI: Yeah, I think that there's
3 an actual condition that is reproduced in staff's
4 comments; it was the one we agreed to. Which I
5 think is more than just deleting three.

6 So we'd just prefer that public health-1
7 in staff's comments be substituted for the
8 existing public health-1.

9 HEARING OFFICER GEFTER: Okay, we'll
10 look at that. I do have staff's comments.
11 Anything else with respect to staff's comments?

12 MR. GALATI: No, and I think we've
13 already discussed the air quality portion of
14 those, of our comments, so we don't have any more
15 comments on the PMPD. We'd be happy to answer any
16 questions on our comments.

17 HEARING OFFICER GEFTER: And, staff, do
18 you have any comments on the applicant's PMPD
19 comments?

20 MR. KRAMER: We covered air quality;
21 soil and water. We agree with the applicant on
22 public health-1. And we have no objections to the
23 removal of hazardous-13, as the applicant has
24 requested.

25 HEARING OFFICER GEFTER: Okay. And

1 intervenors did not file any specific comments on
2 the PMPD in writing, so we'll just take your
3 comments orally after we go through the discussion
4 between the applicant and staff.

5 With respect to condition public health-
6 1, we know that the staff has said that they want
7 us to use, it's at page 39 of your comments, you
8 want us to use the language here; and that you
9 thought that the PMPD didn't reflect the final
10 version that staff had proposed.

11 And I wanted to go over it just a minute
12 with you. In fact, the condition that is in the
13 PMPD reflects language from the FSA, the final
14 staff assessment. It wasn't in the condition,
15 itself, but it was in the text of the final staff
16 assessment. And it was at page 4.7-16. And
17 that's where the comment in the PMPD comes from.

18 And it makes sense to actually be more
19 specific, it seems, and follow the guidelines that
20 were set out in the FSA. Although it makes sense
21 from the comments of the applicant, requirement 3,
22 as written in the PMPD, be removed because it
23 seems that the requirement for periodic testing
24 isn't necessary if they're following CTI
25 guidelines.

1 So, Dr. Greenberg, do you follow what
2 I'm referring to?

3 DR. GREENBERG: I do follow, Hearing
4 Officer Gefter, and the reason that staff supports
5 the applicant's proposal is because that is what
6 we did indeed negotiate at the evidentiary
7 hearing.

8 The difference is specification versus
9 performance. And the key here is that the
10 performance standards that the applicant and staff
11 have provided does take into consideration and
12 does include key issues that we have to follow,
13 either by the Cooling Technology Institute
14 guidelines or staff guidelines. And the staff
15 still will, through the CPM, still will review and
16 approve those plans that the applicant submits.

17 Just to be consistent with our agreement
18 we think that it's important to have the words of
19 the condition of certification reflect that.

20 HEARING OFFICER GEFTER: Well, we'll
21 take that under consideration.

22 MR. GALATI: I just wanted to clarify
23 one thing on what you said, Ms. Gefter, is number
24 three is actually periodic cleaning. We have no
25 problem with the testing as is done by the

1 guidelines. It's just that the periodic cleaning
2 is something that, quite frankly, conflicts with
3 the guidelines.

4 HEARING OFFICER GEFTER: Yeah, okay, I
5 stand corrected. It is. I meant to say periodic
6 cleaning and I was looking at something else,
7 also. Okay, thank you for clearing that up.

8 All right, so we will move on then to,
9 let's see, I think the next area that we wanted to
10 talk about was applicant's comments on air quality
11 which we were holding over from the evidentiary
12 hearing.

13 And I think if we can, at this point,
14 focus on condition AQC-7. In the PMPD we deleted
15 the reference to allow the applicant to modify its
16 operations to reduce emissions until emission
17 levels could be reached. And that was eliminated
18 from the condition in the proposed decision. And
19 the applicant has a concern about that, and so we
20 wanted to focus our discussion on that at this
21 moment.

22 MR. GALATI: Our position was is that as
23 you're well aware the applicant's modeling was
24 substantially different than staff's modeling.
25 And in an effort to come to some agreement we

1 adopted and proposed that staff's numbers of what
2 should be mitigated for, we would accept those
3 numbers, provided that we had the flexibility to
4 either get actual emission reductions, or to
5 reduce our emissions, which staff was in agreement
6 with.

7 The idea here is that if we reduce the
8 emissions we don't have those impacts, as well as
9 if we have the emissions we actually have to get
10 the emission reductions.

11 We asked for other changes that the PMPD
12 did not adopt, and we're not asking for those now.
13 But what we are asking for is that the -- my
14 concern is in reading air quality C-7, the
15 additional wording which specifically requires the
16 getting of them -- let me get that language in
17 front of me, I apologize -- my concern is that it
18 could be interpreted when you read AQC-7 by the
19 addition of the sentence that says: The project
20 owner shall achieve permanent emission reduction
21 targets according to the following."

22 It could be interpreted that that's
23 actual getting emission reductions, as opposed to
24 altering the operations. That's why we asked
25 that, so when you read the way we originally wrote

1 it, it's: We shall limit or" if you don't want to
2 limit then these are the reductions you have to
3 get.

4 So we'd ask for that clarification.

5 HEARING OFFICER GEFTER: Okay. Well,
6 the second sentence of AQC-7 says: The project
7 owner shall limit facility emissions equivalent to
8 the amounts shown in table AQC-7." So, in fact,
9 it still does allow that flexibility because it
10 allows the facility to reduce its emissions. It
11 also says that you need to achieve the limits
12 established by the targets that staff and the
13 applicant had agreed upon.

14 MR. GALATI: My only concern is that
15 later on it could be interpreted that the project
16 owner shall achieve, permit emission reduction
17 targets. Even though it says according to the
18 following, just to make it clear --

19 HEARING OFFICER GEFTER: So you want to
20 eliminate "according to the following"? Is that
21 the part --

22 MR. GALATI: Actually just eliminate the
23 first sentence, and then it poses the same
24 requirements: One, we shall limit or we shall get
25 the reductions, which was the intent of what we

1 drafted. And I was just concerned that it could
2 be interpreted that we had to do both.

3 MR. KRAMER: When you say the first
4 sentence, that ends with the colon?

5 MR. GALATI: That ends with the colon,
6 yeah, just that which was added, which I believe
7 is highlighted.

8 MR. KRAMER: Okay.

9 MR. GALATI: Just that the project owner
10 shall achieve permit emission reduction targets
11 according to the following. If we wanted to
12 change that to say that, you know, the project
13 owner shall do either of the following, something
14 like that, I mean if that makes it clearer.

15 But that was our only concern, and I do
16 recognize that it is picking nits, but I wanted to
17 make sure the condition reflects what we all
18 anticipated.

19 HEARING OFFICER GEFTER: Okay, we'll
20 consider that modification. Anything else with
21 respect to AQC-7?

22 MR. GALATI: Yes, and this is another
23 reason why they kind of tie together, is the
24 modification to the verification is such that we
25 would be required to provide the funds above the

1 amount required by the AQMA to achieve all the
2 emission reduction targets right away.

3 If the applicant chooses, and that's why
4 we had written it that way, if the applicant
5 chooses to reduce their emissions there wouldn't
6 be a requirement to fund emission reductions for
7 that particular amount of time.

8 So, the timing of funding and the timing
9 of --

10 HEARING OFFICER GEFTER: Well, it also
11 says you can identify alternate emission
12 reductions, which would mean reducing operations.

13 MR. GALATI: Right, but when -- if you
14 read the sentence as it's modified now, it's at
15 least 60 days after delivery of the turbine, we
16 have to show proof that we provided sufficient
17 funds to achieve the emission reduction targets.
18 And if you look at the table that's what it's
19 called. Along with an additional plan of
20 allocating the funds are identified in alternate
21 emission reductions.

22 We have committed to provide San Joaquin
23 Valley x number of dollars, which we agreed to do
24 ahead of time. Whatever is the remainder we may
25 do by limiting the emissions from the plant as

1 opposed to getting additional reductions.

2 And so by providing the funds prior to
3 60 days, we're actually funding all the emission
4 reductions when the plan may show that we're going
5 to alter our operations, and we've accepted them
6 as permit limits. So that either way there will
7 not be an impact.

8 So, requiring all of the funds to be
9 placed up front when that might not be the
10 mitigation strategy was something that we --

11 HEARING OFFICER GEFTER: Okay, well, two
12 things. One is that as you read the PMPD we don't
13 necessarily accept the AQMA as the final word on
14 mitigation, on mitigation fees. So, you know, we
15 are not committed to limiting the applicant's
16 mitigation requirements to the AQMA. And we
17 haven't.

18 MR. GALATI: Yeah, AQC-7, and we now
19 agree, but we are committed to give the AQMA
20 funds, and so that's why --

21 HEARING OFFICER GEFTER: But that's a
22 separate agreement between the applicant and the
23 Air District. And it can be used to comply with
24 AQC-7.

25 MR. GALATI: I guess what I'm saying is

1 we could verify compliance with the condition by
2 showing you how we're not going to emit more than
3 these. And that requires us to put no money
4 anywhere.

5 HEARING OFFICER GEFTER: And that was
6 another question that came up, which was the
7 proposal to modify operations to reduce emission
8 limits.

9 How can the project assure that it will
10 modify its operations if, in fact, you have a
11 contract to provide a certain amount of power at
12 any given time, and if there's a must-run contract
13 with Cal-ISO or any other purchaser of the power.
14 And, you know, the applicant then says, well, we
15 can't meet the contract because we have to reduce
16 emissions and we have to, therefore, curtail
17 operations?

18 MR. GALATI: We'll have to get emission
19 reductions in order to enter that kind of
20 contract. But we may not enter it such as
21 contract. And condition AQC-7 limits us to one of
22 two ways of providing that mitigation. And it's
23 enforceable -- if the applicant would be in
24 violation of the conditions and could lose their
25 license if they don't operate within these

1 criteria.

2 If we got such a contract like that, I'm
3 sure that the emission reduction targets would be
4 achieved through placing the appropriate funds in
5 the appropriate place, so that there would be
6 limited operations. Or maybe it's a contract that
7 only provides limited operations.

8 So, that's, again, the whole idea behind
9 the flexibility we're requesting. And I point out
10 that under no circumstance would there be an
11 impact using staff's analysis, using this
12 approach.

13 HEARING OFFICER GEFTER: Again, we'll
14 take that under consideration.

15 MR. SARVEY: Can I make a comment about
16 that? Is it possible?

17 HEARING OFFICER GEFTER: Yes.

18 MR. SARVEY: I tried to bring this point
19 up earlier, and maybe I didn't elaborate it very
20 well, but I have a problem with the project being
21 told during a six-month period that they can't
22 run. That doesn't necessarily line up with the
23 times and dates where these violations might
24 occur, particularly in the ozone season. And I
25 tried to make that point. I didn't do a very good

1 job.

2 But, you know, if they restrict their
3 operations in months where there's no real severe
4 impact it doesn't make a lot of sense in terms of
5 reducing the chances that there could be a
6 violation. My main months of concern are July,
7 August and -- probably June, July and August.
8 And, you know, there's no teeth in the particular
9 condition here that prevents that from happening.
10 Because those are the months where we have the
11 problems, and --

12 HEARING OFFICER GEFTER: Let me ask Mr.
13 Birdsall, because it seems to me they took that
14 into account and they divided it into two six-
15 month periods, and they came up with the emission
16 limits for each season.

17 Could you address Mr. Sarvey's concerns?

18 MR. BIRDSALL: Well, I hope so. I think
19 it seems like an open dialogue here, and I think
20 what Mr. Sarvey is concerned about is that under
21 these limits the plant could, for example, run
22 June, July and August, and curtail its operations
23 in April, May, and still not exceed the caps.
24 Because the caps are defined on a six-month basis.

25 Now, in response to that I want to

1 remind everybody that the project emissions on an
2 hourly basis, every single hour, must first of
3 all, meet the conditions of the Bay Area Air
4 Quality Management District BACT requirements, and
5 so every hour the plant operates they won't
6 operate more than that maximum allowable emission.
7 And that's what is the basis of our analysis for
8 AQSC-7 -- or AQC-7.

9 I think -- I guess I'm not sure I
10 understand what the concern is. Are you worried
11 that more of the emissions will occur in --

12 MR. SARVEY: Well, I'm just -- what I'm
13 concerned --

14 MR. BIRDSALL: -- July --

15 MR. SARVEY: -- is, you know, obviously
16 in May, April and May there's not a lot of demand
17 for electricity, and those would be times when the
18 project would most likely be down. Now the months
19 when we have the most violations, June, July and
20 August, the plant will probably be called on to
21 run.

22 So, basically they're not being
23 restricted in the time when it really needs to be
24 restricted. It's being restricted in April and
25 May and September -- but the few months when we

1 really have the ozone problem there's no mechanism
2 in this thing to keep them from running, and
3 because they don't have the emission credits that
4 we're going to get through these programs, in my
5 eyes we're not preventing a violation in those
6 three months; but we're most likely going to have
7 that violation.

8 And I think it's a timing thing, and I,
9 you know, I don't know how you revise the permit
10 condition. I sympathize with where we're at, but
11 that's what I see.

12 MR. GALATI: The only thing I'd like to
13 comment on that is remember the plant is fully
14 offset for the Clean Air Act. This condition only
15 takes into account those residual CEQA impacts
16 that we sit here today, believe were fully taken
17 care of by the AQMA. We believe that this is
18 extremely conservative. And to account for the
19 plant's emissions on an hour-by-hour basis is not
20 how it's done federally, and it shouldn't be how
21 it's done CEQA-wise.

22 We're going to be providing, under any
23 scenario, a net air quality impact, I think, a net
24 air quality benefit to the area doing this program
25 or limiting our emissions. And, you know, our

1 modeling has showed that we're not causing
2 violations, and I don't think that we will
3 continue.

4 So, I think that this is an extremely
5 favorable compromise on behalf of the applicant to
6 come a long way towards accepting every number
7 that staff used. And we're asking for the
8 flexibility that makes sense, which is don't emit,
9 or if you do, get the reduction.

10 Because staff's original was get all the
11 reductions, so then we could continue to emit.
12 That doesn't resolve your issues, either.

13 MR. SARVEY: Well, it does if we do have
14 the reductions in hand. But I understand your
15 position and that's something we're going to
16 disagree on. Unfortunately, you're going to have
17 a tough call on that one.

18 MR. GALATI: But the original --

19 MR. SARVEY: -- my position.

20 HEARING OFFICER GEFTER: Okay, let me
21 just interrupt you for a minute. As the condition
22 is written it's in six-month seasons. Originally
23 it was written with three-month seasons, you know.
24 And perhaps the quarterly approach would address
25 Mr. Sarvey's concern more appropriately than the

1 six-month approach.

2 And, you know, I don't really remember
3 why it was switched from quarterly to six-month
4 type of approach.

5 MR. BIRDSALL: Well, hopefully I can
6 kind of try to tie this all together. Staff
7 needed -- well, at the early stages of this
8 project we really had no idea how to assess the
9 residual impacts to the Central Valley. We knew
10 that Bay Area credits would mitigate the project
11 partially. And as Mr. Sarvey is pointing out, --
12 well, -- we knew that the Bay Area credits would
13 mitigate the project partially. We weren't sure
14 how to assess the residual impacts to the Central
15 Valley.

16 The first indication that we got from
17 the Central Valley Air Pollution Control District
18 in the form of their agreement with the applicant
19 was to divide the year into ozone season and
20 particulate matter season. And that's the first
21 step of the air quality mitigation agreement that
22 the Central Valley District and the applicant
23 entered into.

24 And so we've kept that as our theme for
25 staff's mitigation. And there will be days within

1 the season that maybe the original source that is
2 reduced in the Bay Area is reduced, and then the
3 project isn't turned off. Or maybe there are days
4 when the project is turned on, and the mitigation
5 is occurring. You cannot force the project to
6 operate on a day-by-day basis.

7 So, we devised the mitigation to follow
8 really the theme of the Central Valley's
9 mitigation approach, which was to just look at the
10 nonattainment seasons. And so that's how the cap
11 is divided into just these two seasons.

12 HEARING OFFICER GEFTER: So the County
13 Air District uses two seasons and what for --

14 MR. BIRDSALL: Well, the San Joaquin
15 Valley Air District's mitigation agreement with
16 the applicant is divided into particulate season
17 and ozone season. It's just those two six-month
18 periods.

19 PRESIDING MEMBER GEESMAN: So what was
20 your rationale when you originally framed this as
21 a quarterly cap?

22 MR. BIRDSALL: Well, the rationale for
23 the quarterly was based on the San Joaquin Valley
24 Air District's emission reduction credit bank,
25 which is divided into quarters. And the bank may

1 still be used as a source of mitigation if the
2 applicant chooses to enter into the bank.

3 So we divided the mitigation
4 requirements into quarters so that the applicant
5 could go to the bank for each quarter and draw
6 from the right quarter.

7 When we look back at the beginning --
8 well, after we proposed that, the applicant was a
9 little bit concerned about the flexibility. And
10 we agreed with that because the Central Valley Air
11 District really was only concerned about two six-
12 month periods that we didn't need the quarter-by-
13 quarter breakdown.

14 HEARING OFFICER GEFTER: The concern
15 seems to come from the AQMA, right? And so that's
16 an agreement, a private agreement between the Air
17 District and the applicant. Staff isn't bound by
18 the AQMA, and therefore is not necessarily bound
19 by the six-month -- those two six-month seasons.
20 And so your original quarterly analysis might be
21 more appropriate. And that's, I think, what we
22 can't quite follow.

23 MR. SWANEY: May I interject something?

24 HEARING OFFICER GEFTER: Just let Mr.
25 Birdsall answer first.

1 MR. BIRDSALL: I think that the seasonal
2 six-month window provides really the best of both
3 worlds. It allows the applicant to not have a
4 three-month cap, and it provides us with the
5 mitigation during the proper months.

6 We cannot line up the mitigation every
7 hour with every hour, and so we're left with kind
8 of a programmatic correction.

9 HEARING OFFICER GEFTER: And could you
10 identify yourself, please?

11 MR. SWANEY: I'm Jim Swaney with the San
12 Joaquin Valley Air Pollution Control District.

13 HEARING OFFICER GEFTER: Yes, okay.

14 MR. SWANEY: I believe I was sworn in in
15 the September hearings.

16 HEARING OFFICER GEFTER: Yes, come and
17 speak to this microphone. Just pull one of these
18 mikes to you.

19 MR. SWANEY: I'm Jim Swaney with the San
20 Joaquin Valley Air Pollution Control District.
21 There is a regulatory basis for looking at things
22 on a quarterly basis, but also on a seasonal
23 basis. This is contained within our new source
24 review rule.

25 We calculate offset liabilities based on

1 quarterly emissions. We also issue emission
2 reduction credits based on what reductions
3 occurred during a specific quarter.

4 However, our rule allows for credits if
5 the reduction occurred within the ozone season to
6 be used anytime throughout the year. Conversely,
7 if the reduction in particulate matter occurred
8 during the main particulate matter season, it can
9 be used throughout the year. So there is the
10 portability of the reductions throughout the peak
11 season.

12 I just wanted to bring that up to
13 explain the basis of why we look at things on a
14 quarterly, but also why we look at things on a
15 seasonal basis.

16 PRESIDING MEMBER GEESMAN: So, Mr.
17 Sarvey, it sounds like your concern really is
18 directed at the way in which the Air District
19 looks at this.

20 MR. SARVEY: My concern basically, as I
21 said, I don't see that the mitigation matching up
22 with the emissions --

23 PRESIDING MEMBER GEESMAN: I think what
24 the Air District has told us is that they allow
25 for it to be used during the entire year.

1 MR. SARVEY: We've argued about that in
2 the past.

3 PRESIDING MEMBER GEESMAN: I figure you
4 have.

5 (Laughter.)

6 MR. SARVEY: But, you know, I still hold
7 my position, you know, and I understand that t he
8 Committee has to make that decision.

9 PRESIDING MEMBER GEESMAN: Well, I have
10 a better understanding now as a result of --

11 MR. SARVEY: And I understand their
12 position, and I understand staff's position. I
13 just disagree, that's all.

14 PRESIDING MEMBER GEESMAN: Okay.

15 HEARING OFFICER GEFTER: Well, thank
16 you. Anything else on AQC-7?

17 MR. GALATI: Just those two points.

18 HEARING OFFICER GEFTER: I have a
19 question for the applicant before we move on. In
20 the PMPD at page 143, staff had a comment and I
21 wanted the applicant to explain the answer that
22 comment. This deals with the calculation.

23 This is apparently how the AQMA was
24 calculated and there was a net mitigation balance
25 of 63.9 tons per year VOCs and NOx. And when you

1 actually do the calculation it doesn't really come
2 out to be 15,000 -- would be at 957 -- hundred
3 thousand dollars. And I understand that there was
4 actually a round-off in that calculation.

5 MR. GALATI: There is a round-off. If
6 you remember correctly the AQMA does not require
7 the actual obtaining of 63.9 tons and
8 demonstration of that amount. The Air District,
9 in fact, testified they thought they could achieve
10 a lot more than 63.9 tons. They used 63.9 to
11 back-calculate how much money they think they
12 would need to get a minimum of that amount.

13 So, when the calculation was done it was
14 63.85007 tons per year that was the residual
15 liability as San Joaquin Valley calculated it.
16 But when it came time to reduce it to an agreement
17 they just rounded that number up in the agreement
18 because again the agreement requires the payment
19 of an x number of funds, not getting an x number
20 of tons.

21 So the funds, and as they testified
22 before, they think they will get more than 63.9
23 tons and we're urging them to get a lot more now
24 that we have agreed to AQC-7, which requires us to
25 get much more than 63.9 tons.

1 HEARING OFFICER GEFTER: Anything else
2 from either party on comments on air quality?
3 Okay.

4 Then, I don't think there are any other
5 objections to each other's comments.

6 MR. GALATI: I don't think so, but we
7 did already talk about AQC-9. Does the Committee
8 need any more information about that?

9 HEARING OFFICER GEFTER: No. In fact,
10 you know, as I indicated earlier, we also heard
11 from the City on that one, and so we will take
12 those concerns into consideration.

13 I do agree with, you know, applicant's
14 comments. We had referred to AQC-6, and it really
15 was AQC-7, although you have requested that we
16 don't even refer to that particular condition.

17 All right. Now, staff, in staff's
18 comments there were many editorial and typos and,
19 you know, revisions based on current conditions,
20 and as I understand it, applicant has no problem
21 with those editorial changes or --

22 MR. GALATI: No.

23 HEARING OFFICER GEFTER: -- changes --
24 okay. So we will just accept staff's comments as
25 submitted.

1 And now we can open up the discussion to
2 public comment. And we have a number of people
3 here this evening who would like to comment.
4 Also, we've asked some of the expert staff to
5 remain. Our air quality staff and I think some of
6 our water staff is still here, are they?

7 UNIDENTIFIED SPEAKER: Yes.

8 HEARING OFFICER GEFTER: Way in the
9 back, okay. And so I know members of the public
10 have comments both on water and air and public
11 health, and those expert witnesses are present to
12 try to address some of your concerns.

13 So, let's begin. I have cards from Mr.
14 and Mrs. Sundberg, blue cards from you folks. And
15 if you could please come forward so that you could
16 speak into the microphone.

17 PRESIDING MEMBER GEESMAN: The
18 microphones are important so that the reporter can
19 develop a transcript. They're not going to
20 amplify your voice, though, so just because your
21 voice doesn't sound loud it doesn't mean that
22 they're not working and performing their intended
23 service.

24 MS. SUNDBERG: Are we ready?

25 HEARING OFFICER GEFTER: Yes.

1 MS. SUNDBERG: Irene Sundberg, Tracy,
2 California. I'm very concerned about the fact
3 that our City and our City Council has chosen to
4 be so blatant about giving our water away. I
5 believe in the dry cooling process.

6 I would like to have all the members
7 take a drive around our City and look at our
8 medians. This has become a great problem of
9 contention here because of the fact that our City
10 is not providing its responsibilities to the rest
11 of us.

12 Our water has been cut off to many of
13 the medians within the City in several different
14 areas. And with this happening our town looks
15 like it's been droughted. And if we don't have
16 the dollars and cents to be able to supply our
17 parks and our medians, how in the world are we
18 going to be able to supply this project with water
19 when we can't take care of our own right now.

20 It's a great concern to me. Along with
21 the fact that I have not seen represented here
22 again today, I wasn't here all day, but I see no
23 representation from our City Council. Our City
24 Council has rolled over and played dead, and we
25 shouldn't allow that to continue.

1 Thank you.

2 MR. SUNDBERG: The only thing I have to
3 add is I'm tired of cleaning up the rocks from our
4 strainers inside of our faucets in the house
5 because they're pumping so close to the bottom
6 that we get rocks at least once a month in our
7 water supply.

8 UNIDENTIFIED SPEAKER: Would you state
9 your name?

10 MR. SUNDBERG: Paul Sundberg; I live
11 here in Tracy.

12 HEARING OFFICER GEFTER: Thank you.
13 Paula Buenavista. If you could please come
14 forward so you can speak into the microphone.

15 MS. BUENAVISTA: Yes, no problem.

16 HEARING OFFICER GEFTER: Thank you.

17 MS. BUENAVISTA: I'm Paula Buenavista,
18 resident of Tracy. I just have a few bullet
19 points here I'm going to go ahead and read through
20 for you.

21 In recalling the hearings last year the
22 Bay Area Air Quality Management District testified
23 that they do not monitor for biological accidents.
24 So, in looking over the testimony provided, it
25 appeared to me that dry cooling seemed to be the

1 best fit.

2 Also in the area of dry cooling, it
3 looks as if it should be required due to the fact
4 that it doesn't appear that the applicant's going
5 to pay anywhere near that the same -- or anywhere
6 near the same rate that the ratepayer of Tracy,
7 the people in this County, do pay for our precious
8 commodity of water.

9 And looking closely at our local air
10 quality, it appears that 2 ppm ammonia slip should
11 be required. It's also used in other parts of our
12 country, here in the U.S. And the reason being is
13 due to the fact that we are already in an ammonia-
14 rich environment here in Tracy locally. We
15 already have industry locally producing large
16 levels of ammonia. One of those industries being
17 the farming industry. And they're producing large
18 levels of that. And our community really can't
19 afford any more of that ammonia at this time. And
20 this is, of course, also a precursor to
21 particulate.

22 In considering the CEC process I have
23 not discovered anywhere that there's anyone to
24 protect my community from being gouged with
25 inflated water prices. And there's been much

1 discussion about how the wastewater treatment
2 plant and other things that need to be built and
3 constructed are going to be paid for. And as we
4 all know, when big projects do occur the local
5 people really are the ones that end up paying.

6 For example, the State of California, we
7 will all pay for the mistakes of legislators and
8 politicians who didn't spend our money wisely in
9 the past. So, in looking at that, it's a great
10 concern about the prices.

11 And I really feel that these are prices
12 that many of the people of Tracy, a lot of the
13 citizens, will really struggle with as far as
14 price goes.

15 And it appears that the Tesla Power
16 project will have most all of our recycled water
17 and/or or potable water should the wastewater
18 treatment plant not be built in enough time for
19 its operation, should it be -- the applicant be
20 approved.

21 The perception of local residents is
22 that Tesla should at least be required to pay the
23 same rate or something, some type of figure that's
24 close to it, so that there's some kind of
25 compensation for the people living here locally.

1 Because I do really perceive it to be extremely,
2 it will be extremely expensive for the local
3 people here. And there are people here, you know,
4 there's the working poor living here in Tracy.
5 And people that will have a real hard time
6 struggling. And we're just hoping to get some
7 support from the Commission when it comes to
8 looking over that particular area.

9 Thank you. Again, that's Paula
10 Buenavista, resident of Tracy.

11 HEARING OFFICER GEFTER: Thank you.

12 MS. BUENAVISTA: Thank you.

13 PRESIDING MEMBER GEESMAN: Let me say
14 something that I raised at -- can't recall which
15 of our earlier hearings it was, but I want to
16 repeat it, because I realize that not everybody
17 has had the ability to attend all of the hearings
18 that we've held here in Tracy.

19 And that is to explain the way the
20 Energy Commission's jurisdiction works. We're a
21 state agency that has responsibility in a one-stop
22 permitting process, for applying the full range of
23 state, regional and local requirements. We
24 consolidate all of those different requirements
25 into a single permit.

1 And in areas where another agency's
2 requirements conflict with what we believe to be
3 the best public interest, we do have the legal
4 ability to override that other standard. We've
5 only exercised that a few times in the 29 years
6 that we've been siting power plants.

7 And that's a pretty substantial
8 preemptive authority for any agency, really, to
9 shoulder. As I think you know, there's a fair
10 amount of conflict built into California's system
11 of government between the state level government
12 and local government. And as a consequence, we
13 have tried, I think, for the full 29 years that
14 we've been doing this, to defer as much as
15 possible to local judgments.

16 One of the rationales for us holding all
17 of the hearings near the local site is a belief
18 that it better involves the public; provides the
19 public that will be directly affected by the
20 project with a more direct recourse to us; but it
21 also reflects, I think, a commitment to the notion
22 that local government truly is the most responsive
23 level of government to local concerns.

24 And in this water area we are applying a
25 state policy. The policy has recently been re-

1 articulated by the Commission in its Integrated
2 Energy Policy Report adopted last November. But
3 it's a policy that has been on the books in a
4 resolution adopted by the State Water Resources
5 Control Board in the mid 1970s. And that is, and
6 I'm paraphrasing now, when reclaimed water is
7 available it should be used for power plant
8 cooling purposes.

9 I should say that we don't have any
10 involvement in the decisions of what type of terms
11 or contract a local provider of recycled water
12 should negotiate with somebody such as the
13 applicant in this project. That is, I think
14 rightfully, a local concern; and it's something
15 that we're not really in a position to second-
16 guess.

17 I will tell you that underlying the
18 state's policy, which does have a preference of
19 using reclaimed water over fresh water, that there
20 is a value attached not only to avoiding the use
21 of fresh water, which I think we all know,
22 California, in particular other parts of the
23 state, have some severe water supply problems.
24 We're looking at a population in the state of 52
25 million people by 2030.

1 But the policy is also premised on
2 avoidance of discharges into resources such as the
3 Delta, where a lot of California derives its
4 drinking water; where it is also a major
5 recreational and environmental resource.

6 The exact terms and conditions that the
7 City of Tracy negotiates with the Tesla Power
8 Plant are something that are not rightfully in
9 front of us. And I think the local people of
10 Tracy do have recourse to your elected officials
11 if you're unhappy with the way in which that's
12 being approached.

13 It's not something that I feel qualified
14 to impose my own judgment or viewpoint on. And I
15 know the other four Commissioners that will
16 ultimately be making a decision on this feel the
17 same way. We are expected to, and always have,
18 deferred to local government on decisions which
19 are most rightfully made at the local level.

20 We'd better go on to the next.

21 HEARING OFFICER GEFTER: Yeah, we're
22 going to go on then. Did you have a comment that
23 you'd like to make? You can come forward.

24 MS. HOAG: Okay, I just wanted to know
25 if I could testify --

1 HEARING OFFICER GEFTER: Well, you can
2 just come and make a comment, but please speak
3 into the microphone. Just identify yourself,
4 again, please.

5 MS. HOAG: Okay, thank you. I'm Connie
6 Hoag; it's H-o-a-g. Regarding the water, I hadn't
7 signed up to talk earlier about it, but I did want
8 to mention one of the power plants that was
9 installed about three miles away from me in
10 Washington initially proposed dry cooling. Well,
11 actually initially proposed using effluent from
12 the city sewer; very similar to here. They were
13 going to pay the city to upgrade the system, et
14 cetera, et cetera.

15 And then when people started thinking
16 about what effluent would smell like broadcast
17 around the city, they changed the plan and they
18 were going to do dry cooling. And the company's
19 brochures, ten years later, still state that they
20 are using dry cooling. It didn't work out for
21 them, and they went to well water. And they dried
22 up a bunch of wells around there and one of the
23 streams, there was a small stream feeding a creek,
24 which was a salmon-bearing creek. It became a big
25 deal.

1 So my concern here is I just want to
2 make sure if something has been proposed by the
3 applicant and doesn't work, is there a backup plan
4 that's not going to impact an important source of
5 water for the citizens of the area because in this
6 case the plant was built by the time they
7 discovered, quote-unquote, that what they proposed
8 would not work.

9 And so, of course, they were not going
10 to not run a plant that they had put millions of
11 dollars into. So they had the people up against
12 the barrel.

13 Same thing about noise, and I don't know
14 if you're taking any testimony on noise tonight,
15 but that plant ended up being far noisier than
16 they predicted. It's still violating noise
17 standards. The neighbors have complained
18 repeatedly; nothing's been done. The city council
19 there, it's a very small town, the city council is
20 swayed by the tax dollars that this plant bring
21 in. And, in fact, the last proposal was that they
22 would give the company two more years to come into
23 compliance on their noise.

24 And I doubt that the Energy Commission
25 would do something like this, but I don't know

1 where noise falls. Is it a local thing --

2 PRESIDING MEMBER GEESMAN: No, noise is
3 a feature of our license.

4 MS. HOAG: You guys? Okay. And if they
5 violate, you yank the license?

6 PRESIDING MEMBER GEESMAN: They get
7 busted.

8 MS. HOAG: Excellent. Okay. The last
9 thing I wanted to mention was regarding health
10 impacts. It's my big concern.

11 Where I live I'm about ten miles
12 downwind of you guys. And the way I figure it,
13 with the height of the smoke stack that'll just be
14 dropping it right about on our farm. But, I
15 thought that Dr. Greenberg's testimony really
16 highlighted the gap in oversight on health impacts
17 because the health department doesn't even look at
18 the impacts of the criteria pollutants in
19 preparing the health risk assessment.

20 The PM2.5 that I was discussing that I
21 was so concerned about, it's not even looked at.
22 So when he says, you know, there's no health risk
23 to the public, he's not talking about what I was
24 talking about when I said, you know, at 11 mcg/
25 cubic meter you already got these problems. And

1 our current background, according to the report
2 that was prepared by staff, is at 150, which is
3 way way over the standard, and the standard's
4 already too high. And this particular role is
5 delegated to the air districts to look at. And
6 the air districts do not have any discretion.

7 They can't say, you know what, this
8 isn't healthy, so it can't go in. They're
9 strictly regulatory. And so it falls between the
10 cracks. And so the Commission is the only one
11 that can look at that. And I ask you to please,
12 please look at that, because that's what the
13 decision should be based on. Is, is this okay to
14 put here, or will it damage people's health.

15 And the answer is clearly it will damage
16 people's health. The air here already is too bad.
17 It needs to be fixed, not made worse.

18 So I thank you for your time.

19 HEARING OFFICER GEFTER: Thank you.

20 Also, I don't know if you've had a chance to speak
21 with Mr. Birdsall -- there are actually three
22 people from Commission Staff who worked on the air
23 quality. And if you have a chance this evening
24 perhaps you can talk to them about some of your
25 concerns, and they can answer you or direct you to

1 where the information is.

2 MS. HOAG: Thank you. I've tried to
3 buttonhole them off and on.

4 HEARING OFFICER GEFTER: Okay. Well,
5 you know, they'll be here for the evening, so you
6 can maybe go out in the hall.

7 MS. HOAG: Thank you.

8 HEARING OFFICER GEFTER: I notice that a
9 number of people have walked in in the last few
10 minutes. And if you have any comments on the
11 Presiding Member's Proposed Decision, you're
12 welcome to come forward and speak to us. Do you
13 have a blue card?

14 MS. GARCIA: I'll just read my note,
15 okay?

16 HEARING OFFICER GEFTER: Okay, just send
17 me your blue card so we have that here. Please
18 sit down and speak into the microphone and tell us
19 your name.

20 MS. GARCIA: Okay.

21 HEARING OFFICER GEFTER: Thank you.

22 MS. GARCIA: I'm Claudette Garcia. I'm
23 paying for landscape watering for dead plants,
24 landscaping. I don't think the power plant should
25 get free recycled water that I pay for. Okay.

1 PRESIDING MEMBER GEESMAN: Thank you.

2 HEARING OFFICER GEFTER: Thank you.

3 MS. GARCIA: Thank you.

4 HEARING OFFICER GEFTER: Are there any
5 other comments on the PMPD? I know Mrs. Sarvey
6 has a comment. Please come forward and speak into
7 the microphone.

8 MS. SARVEY: Susan Sarvey. I was trying
9 real hard to understand what Mr. Galati was
10 talking about. And before anybody makes any
11 decision about mitigation and who's going to pay
12 what, or if we're going to get our ERCs, I think
13 the Commission first needs to make that first
14 critical decision about what level of ammonia slip
15 we are going to hold them to.

16 And I really think the issue needs to be
17 addressed that came out in that hearing today that
18 it seems like these numbers with these air quality
19 staff people change to fit the project. That was
20 like really disturbing stuff that came out there.

21 And I truly understand everything Mr.
22 Geesman said, and I sympathize with the position
23 you're in. But I don't think, because you don't
24 live here, that you understand the depths of
25 people's anger and despair over their landscaping

1 being dead and their water and sewer rates having
2 skyrocketed just a couple of months ago.

3 And unless you are in a situation where
4 you're cutting a deal in 24 hours, you're in a
5 really precarious situation here, because the
6 people are very very upset, and we are getting
7 ready to have an election. And people are
8 extremely irate on this topic.

9 And it does not make any sense to any
10 ratepayers what the City's doing, and they are not
11 giving any explanation for why they are doing what
12 they are doing. They're not explaining what their
13 rationale is, which just makes people angrier.

14 And so while I understand what you were
15 explaining to us that's at a state level and what
16 your power is, this is going to be a very
17 upsetting issue. And if the City cuts a deal with
18 these people, and they get that recycled water for
19 free, it's going to be an ugly situation in this
20 town for years to come.

21 And I think everybody really needs to
22 think long and hard about that, because that's not
23 pleasant for anyone. And again, I really -- I --

24 PRESIDING MEMBER GEESMAN: Well,
25 democracy gives you a mechanism to deal with that.

1 MS. SARVEY: And I think it's going to.
2 That's what I'm trying to make everyone aware of
3 in this room.

4 PRESIDING MEMBER GEESMAN: And I would
5 submit to you that's the way it's supposed to be.

6 MS. SARVEY: And by the same token I
7 hope that you would ask the air quality staff to
8 come up with a number and a formula, and stick to
9 it, and not say to support one another's thinking,
10 but it's a little different in this case, and it's
11 a little different in that case. They need to get
12 their story straight. There's got to be a
13 straight scoop.

14 PRESIDING MEMBER GEESMAN: I think we
15 have enough information in the record here to make
16 a very well informed decision.

17 MS. SARVEY: I hope so. Thank you.

18 HEARING OFFICER GEFTER: Thank you. Is
19 there anyone else who would like to address us
20 tonight on the PMPD? Are you finished -- Mr.
21 Sarvey, would you like to comment?

22 MR. SARVEY: Yeah.

23 HEARING OFFICER GEFTER: Okay.

24 MR. SARVEY: I have some comments.

25 HEARING OFFICER GEFTER: Come to the

1 mike, bring the mike to you.

2 MR. SARVEY: I was actually hoping I
3 would get to supply some rebuttal testimony here.
4 I put in quite a bit of substantial testimony, but
5 since I didn't, I'll provide that in public
6 comment because I think these are important things
7 for the Committee to understand.

8 I had developed this map here, and this
9 map essentially is the product of our general plan
10 revision. It's the latest land use issues, and
11 the latest land use proposals that are existing.

12 And the reason I created this map, I
13 created this map to show some of the emissions
14 from the projects that were not included in a
15 cumulative impact study. And I can understand the
16 Commission getting tired of hearing me talk about
17 this study. But I've been talking about this
18 study for two and a half years. It started with
19 the Tracy Peaker Plant.

20 And I asked for the study then, because
21 I was one of the few people in the proceeding that
22 did have the knowledge of the actual developments
23 that were going on. And I asked for this study in
24 East Altamont. And I asked for this study in
25 Tesla. In fact, I filed the motion to the staff

1 to compel this study. And the staff took a
2 position, that I'll deal with later, that I
3 disagree with.

4 And then I actually filed a motion to
5 the Committee to compel this study. And the
6 Committee, to date, has not answered my motion.
7 And that is exhibit 82. So, to date I'm still
8 waiting to hear from the Committee on why the
9 staff doesn't have to perform this study.

10 But, in any event, I went out and I
11 approached my Congresswoman; her name's Barbara
12 Matthews. And she sent a letter to Commissioner
13 Keese. And Commissioner Keese told her that this
14 study was done. But, in fact, the study has still
15 never been performed.

16 So that's the distressing part of this
17 entire proceeding, these three power plants here.
18 I could never compel anybody in two and a half
19 years to take all these projects and put down on
20 paper and tell me exactly what was going to happen
21 to the health and welfare of my community and my
22 asthmatic family.

23 HEARING OFFICER GEFTER: Mr. Sarvey, let
24 me just go back to exhibit 82, which was the
25 motion to compel question that you had.

1 MR. SARVEY: Right. And I still have --

2 HEARING OFFICER GEFTER: It was you had
3 filed a data request apparently with staff?

4 MR. SARVEY: Yes.

5 HEARING OFFICER GEFTER: And then they
6 responded by not answering your data request?

7 MR. SARVEY: They responded saying that
8 they considered these projects as background.
9 That the mobile sources from these projects and
10 even the area sources and the point sources from
11 these projects were background, which I strongly
12 disagree with.

13 HEARING OFFICER GEFTER: Okay, but they
14 did --

15 MR. SARVEY: As you can see --

16 HEARING OFFICER GEFTER: -- but they did
17 respond to your data request --

18 MR. SARVEY: They did respond --

19 HEARING OFFICER GEFTER: -- by answering
20 the --

21 MR. SARVEY: -- to my data request.

22 HEARING OFFICER GEFTER: All right.

23 MR. SARVEY: I filed a motion to compel
24 to the Committee which today remains unanswered.
25 And we're done with the proceeding; we've closed

1 air quality. So I've spent two and a half years
2 asking for a study that never occurred.

3 Being the only one in any of these three
4 proceedings that had any idea of the enormous
5 amount of development that's going on here. And I
6 realize that the Committee and the other
7 Committees did know there was a lot of
8 development, but nobody ever sat down and looked
9 at how many tons were being produced here.

10 Now, staff's position that these sources
11 should be considered as background is based on a
12 premise that emissions in San Joaquin County and
13 San Joaquin Valley are decreasing. Well, that's a
14 nice premise, but when you look at the actual
15 results of monitoring from CARB, and I've included
16 many many results. And exhibit 90, for instance,
17 in 1995 we had 18 violations of the state standard
18 for PM10 in Stockton.

19 Now in 2002 we had 60. There has not
20 been, even if emissions are decreasing in this
21 area, there has not been a corresponding reduction
22 in numbers of violations of the ambient air
23 quality standard. And that's the only way we can
24 base health, is what's going on here with the
25 standards.

1 So, now the second part of my exhibit 90
2 was the ozone violations in the Valley, because we
3 consider that more of a regional problem. So, in
4 1993 there was 125 violations of the state
5 standard. And in 2002 there was 127. Now,
6 granted there was periods where that went up and
7 down. But the bottomline is no matter what
8 anybody says, air quality is not improving in this
9 area. It's borne out by the statistics.

10 And my feeling is we have all these
11 projects on the table, you know, and I've beat
12 this thing to death, I've tried everything I could
13 to get the Commission to model these projects, and
14 I'm very very frustrated that it hasn't happened.

15 Now, my comments on this PMPD. If this
16 were a stand-alone project, I would be satisfied
17 with this PMPD. But I'm not dealing with a stand-
18 alone project. I'm dealing with the Tracy Peaker
19 Plant and I'm dealing with East Altamont, and I'm
20 dealing with enormous amount of residential
21 development and business parks, which I have stood
22 before this Council in this room for years asking
23 for some sort of air quality mitigation, and
24 received nothing.

25 So, I don't blame that on the

1 Commission. But it's just to give you some
2 background facts of why I've been so vehement. I
3 apologize when I lose my temper on this. It's
4 really close to my heart; it's very personal.

5 So, you know, I love Tracy. I don't
6 want to leave Tracy. But, to be honest with you,
7 if they build this project, they build East
8 Altamont, every air quality expert that I've
9 talked to in any of these proceedings has told me
10 to move my family out of this town. And that's
11 sad. Even though they testified the project
12 should be sited, they told me to move my family
13 out of this town. And I'm going to take their
14 advice if it happens.

15 But, in any event, I just wanted to
16 address the fact that it's been said that this
17 project is fully mitigated. Now, I've already
18 brought up the fact that the 70 percent credit
19 that's been given to the Antioch ERCs, it's been
20 refuted in the East Altamont Energy Center
21 proceedings. And the Commission decided that it
22 wasn't a valid way to assess the project.

23 Now, when you look at the applicant's
24 emission reduction credits here, you see 1993,
25 1993, 1992, and there's a couple in here, there's

1 an old one, 1981. Now when you look at this, this
2 may be fine for bean-counting in the Bay Area Air
3 Quality Management District, and it does make them
4 achieve their attainment plan on paper.

5 But when you look at the results that
6 CARB has shown us in this exhibit, you will agree
7 that air quality is not improving in this area.
8 And that's the only thing I'm concerned about.
9 And, you know, I don't know how to -- you know,
10 I'm hoping that the Committee's going to rule that
11 this project shouldn't be sited here. Maybe I'm
12 dreaming. I'm hoping that's what you deliberate
13 and come up with.

14 And, you know, if that happens I feel
15 sorry for these people from FPL. I hold nothing
16 against them. They're businessmen, they're trying
17 to make a buck. I hold nothing against the staff
18 for their testimony. Their job is to site power
19 plants. So I just wanted to say that.

20 And I just wanted to address one more
21 thing that Mr. Geesman said on deferring to local
22 governments. Our first experience with the Energy
23 Commission was the GWF Peaker Plant. And
24 Commissioner Pernell was the Presiding Member.

25 And I went to Commissioner Pernell and I

1 said, look, Commissioner Pernell, what do I have
2 to do to keep this project from being sited here.

3 He says, well, you go out and get your county
4 and you get your city to oppose it, and I won't
5 site it here.

6 So I went out and I got a resolution
7 from my city council; I went out and got a
8 resolution from my county board of supervisors.
9 And I went out and I got a resolution from the
10 school district. And I came in and I gave them to
11 Mr. Pernell, and they overrode my governments.
12 They told my governments, we don't care, you're
13 wrong. We're putting this project here.

14 So I know the CEC does take it seriously
15 that, you know, they don't override local
16 governments. But our first experience with that
17 premise is not, you know, it's not comforting.

18 So, only one other thing that I want to
19 say. In the terms and conditions of the recycled
20 water agreement, they should be subject to the
21 cost comparison of using dry cooling and recycled
22 water, with the cost of the recycled water
23 included.

24 At this point we don't have a figure for
25 that recycled water, and nobody knows what they're

1 proposing; nobody knows what the City of Tracy is
2 proposing. So what I'm proposing here is that
3 once these people cut their deal with the City of
4 Tracy, that we install a condition in the project
5 that we go back and we analyze which is the most
6 cost effective method, and we adopt that.

7 And that's all I have to say, thank you.

8 PRESIDING MEMBER GEESMAN: Thank you,
9 Mr. Sarvey.

10 HEARING OFFICER GEFTER: Thank you. Is
11 there anyone else here from the public who wants
12 to speak to us tonight? All right.

13 PRESIDING MEMBER GEESMAN: I want to
14 thank you all for participating with us over the
15 course of what's been a fairly long day.

16 And I appreciate the attention to detail
17 which each of the witnesses have shown.

18 And also the consideration which each of
19 the participants have shown each other. It's been
20 a pretty smooth process today, and I think that's
21 made it go a lot easier.

22 We will put out a final proposed
23 decision as soon as we can.

24 HEARING OFFICER GEFTER: It will be a
25 revised PMPD.

1 PRESIDING MEMBER GEESMAN: A revised
2 PMPD as soon as we can. And then it will be in
3 front of the full Commission.

4 (Parties speaking simultaneously.)

5 PRESIDING MEMBER GEESMAN: Yes, more on
6 the, likely on the end of more.

7 HEARING OFFICER GEFTER: Yes, right.
8 It'll take awhile.

9 And then there's a regulatory
10 requirement of 15-day comment period on the
11 revised PMPD before it goes to the full
12 Commission. So that's also added onto the time.

13 MR. GALATI: Four weeks for the revised
14 PMPD? Or four weeks till we get to the --

15 HEARING OFFICER GEFTER: No, at least
16 the revised, and that's a very -- we cannot
17 predict how long it will take.

18 MR. KRAMER: Staff has no intention --

19 UNIDENTIFIED SPEAKER: That's unless you
20 complain, Scott, then it's going to be longer.

21 MR. KRAMER: -- of filing a brief. So,
22 I don't know if anybody else does.

23 HEARING OFFICER GEFTER: Briefs are not
24 required, but if anyone wishes to file one, they
25 can.

1 Okay, with that, the hearing is
2 adjourned. Thank you for coming.

3 (Whereupon, at 7:25 p.m., the Committee
4 Conference was concluded.)

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CERTIFICATE OF REPORTER

I, JAMES RAMOS, an Electronic Reporter,
do hereby certify that I am a disinterested person
herein; that I recorded the foregoing California
Energy Commission Hearing and Committee
Conference; that it was thereafter transcribed
into typewriting.

I further certify that I am not of
counsel or attorney for any of the parties to said
hearing and conference, nor in any way interested
in outcome of said hearing and conference.

IN WITNESS WHEREOF, I have hereunto set
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